

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE

FREDRIC RELLER,)	
)	
PLAINTIFF,)	
)	
VS.)	SUPERIOR COURT
)	CASE NO. BC 261796
PHILIP MORRIS, INCORPORATED,)	
A CORPORATION, ET AL.,)	
)	
DEFENDANTS.)	
)	

REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
THURSDAY, JULY 17, 2003
P.M. SESSION
PAGES 9618 THROUGH 9711, INCLUSIVE

APPEARANCES:

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I N D E X

THURSDAY, JULY 17, 2003..... 9618:3
12:15 P.M..... 9618:7

WITNESSES

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REDIRECT EXAMINATION BY MS. WILKINSON..... 9628:1

JERRY WHIDBY

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9618

1 CASE NUMBER: BC 261796
2 CASE NAME: RELLER V. PHILIP MORRIS
3 LOS ANGELES, CALIFORNIA THURSDAY, JULY 17, 2003
4 DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: LINDA BICHE, CSR NO. 3359, RMR, CRR
7 TIME: 12:15 P.M.

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10

11 SHABA SREENIVASAN,
12 WITNESS, RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:
13 THE COURT: BACK IN THE MATTER OF RELLER VERSUS
14 PHILIP MORRIS, BC 261796.
15 THE RECORD SHOULD REFLECT THAT ALL TWELVE
16 JURORS AND FOUR ALTERNATES ARE PRESENT.
17 ALL COUNSEL PREVIOUSLY STATED, EXCEPT FOR
18 MS. MATTHEWS, ARE PRESENT.
19 DR. LEWIS IS PRESENT.
20 DR. SREENIVASAN IS PRESENT IN THE WITNESS
21 STAND.
22 DOCTOR, YOU'RE STILL UNDER OATH.
23 BOTH COUNSEL HAVE TOLD ME THAT I'M A LITTLE
24 GRUMPIER TODAY THAN USUAL, SO IF I AM, I APOLOGIZE TO COUNSEL
25 FOR BEING SO. HOWEVER, I HAVE SEVERAL THINGS ON MY MIND. SO
26 I DO APOLOGIZE.
27 PROCEED, MR. PIUZE.
28 IS THIS YOURS?

9619

1 YOU'RE ON. YOU'RE UP.
2 MR. PIUZE: YES.
3 THE COURT: OKAY.
4
5 CROSS-EXAMINATION (RESUMED)
6 BY MR. PIUZE:
7 Q. IS IT CORRECT THAT YOU DON'T TREAT PEOPLE

8 SPECIFICALLY FOR NICOTINE DEPENDENCE, THEY MAY HAVE
9 SCHIZOPHRENIA AND ALSO BE NICOTINE DEPENDENT; YOU ARE
10 PRIMARILY TREATING THE SCHIZOPHRENIA BUT SECONDARILY TREATING
11 THE NICOTINE DEPENDENCE.

12 DOES THAT SOUND RIGHT?

13 A. YES.

14 Q. THEY MIGHT BE COCAINE ADDICTS AND ALSO SMOKE,
15 AND YOU TREAT THE SUBSTANCE ABUSE AND THEN TREAT THE SMOKING;
16 IS THAT CORRECT?

17 A. YES.

18 Q. AT THE V.A., STARTING AT FOUR OR FIVE YEARS
19 AGO, ROUGHLY, THE V.A. STARTED TO ENCOURAGE YOU AND ALL OF
20 THE PROFESSIONAL PEOPLE ON THEIR STAFF SO THAT WOULD BE
21 AROUND, WHAT, 1998, -9, FOUR OR FIVE YEARS AGO, 1997, '98?

22 A. SOMEWHERE IN THERE.

23 Q. FOUR OR FIVE YEARS AGO, THE V.A. STARTED TO
24 ENCOURAGE YOU AND OTHER PROFESSIONALS ON THE STAFF THAT
25 WHENEVER SOMEONE CAME IN FOR ANY REASON, A PATIENT, TO SEE
26 YOU, AND YOU'RE A PSYCHOLOGIST, FOR WHATEVER PSYCHOLOGICAL
27 REASONS, THAT YOU WERE TO DO A BRIEF INTERVENTION TO TRY TO
28 MENTION TO THEM WHENEVER POSSIBLE TO CUT OUT THE SMOKING?

9620

1 A. YES. TO DO ACTUALLY TO DO THOSE FIVE A'S.

2 Q. MR. RELLER, WHEN HE TALKED TO YOU AND TALKED
3 ABOUT TRYING TO STOP SMOKING, YOU'D ALREADY READ, BEFORE HE
4 TALKED TO YOU, AND NOT ONLY READ, BUT YOU HAD SEEN HIS
5 DEPOSITION, THE VIDEO, READ IT AND SEEN IT, WHERE HE SAID,
6 YOU KNOW, MOST OF THOSE TIMES, I WAS GOING THROUGH THE
7 MOTIONS.

8 REMEMBER THAT?

9 A. YES.

10 Q. ONE OF YOUR COMMENTS TO ME -- CORRECT ME IF I'M
11 WRONG NOW -- THAT MEANT TO YOU, HE DIDN'T TRY HARD ENOUGH OR
12 HE WAS SELF-REPORTING, HE WAS SELF-REPORTING, I WASN'T
13 TRYING, OR I WASN'T TRYING HARD ENOUGH?

14 A. WHAT IS THE QUESTION?

15 Q. ISN'T IT CORRECT THAT YOU BELIEVE HIS
16 SELF-REPORTING, NOW, LOOKING BACK, IS THAT HE WASN'T TRYING,
17 OR HE WASN'T TRYING HARD ENOUGH?

18 A. I THINK THAT WOULD BE ACCURATE. I THINK HE
19 AGREED THAT HE WAS GOING THROUGH THE MOTIONS, AND HE WAS
20 DOING IT TO MAKE HIS WIFE HAPPY, BUT I THINK THAT WOULD BE A
21 FAIR CHARACTERIZATION.

22 Q. THAT WASN'T THE QUESTION I ASKED, THOUGH.
23 THE QUESTION I ASKED IS: YOUR OPINION IS, HIS
24 SELF-REPORT NOW, YOUR SPIN THAT IT WAS A LITTLE OF BOTH, A
25 LITTLE, GEE, I DIDN'T TRY, AND GEE, I DIDN'T TRY HARD ENOUGH?

26 A. YES, I SUPPOSE THAT'S TRUE.

27 Q. WELL, YOU PREVIOUSLY TOLD ME THAT, HAVEN'T YOU?

28 A. I'M NOT LOOKING AT MY DEPOSITION, BUT IF THAT'S

9621

1 WHERE YOU'RE QUOTING IT FROM, I'LL TAKE YOUR WORD FOR IT.

2 Q. HERE, I'LL JUST --

3 MS. WILKINSON: YOUR HONOR, OBJECTION. SHE'S
4 NOT -- HE'S NOT IMPEACHING HER. SHE AGREED. THERE'S NO NEED
5 TO --

6 MR. PIUZE: OKAY. FINE.

7 MS. WILKINSON: -- OR SHE'S NOT DISAGREEING, AS FAR
8 AS I HEAR.

9 THE COURT: OKAY.

10 MR. PIUZE: THAT'S FINE.

11 Q. BEFORE -- BEFORE, YOU TOLD US THAT YOU WERE
12 AWARE OF DR. BENOWITZ' TESTIMONY, BOTH IN THE DEPOSITION FOR

13 THIS CASE AND RIGHT HERE IN FRONT OF THE JURY FOR THIS CASE,
14 RIGHT?
15 A. YES.
16 Q. OKAY. DR. BENOWITZ GAVE AN OPINION THAT
17 MR. RELLER HAD BEEN ADDICTED TO CIGARETTES. AND ALTHOUGH YOU
18 HAVEN'T SAID SO THUS FAR, YOU AGREE, IT'S YOUR OPINION THAT
19 MR. RELLER WAS NICOTINE DEPENDENT, RIGHT?
20 A. THAT'S CORRECT.
21 Q. DR. BENOWITZ GAVE AN OPINION THAT ANYONE CAN
22 STOP SMOKING, AND IT'S YOUR OPINION THAT YOU AGREE WITH THAT,
23 THAT ANYONE CAN STOP SMOKING, OTHER THAN THESE EXTREMELY
24 SMALL CATEGORIES OF BRAIN DAMAGED PSYCHOTICS, ET CETERA?
25 A. I THINK THAT'S TRUE.
26 Q. DR. BENOWITZ GAVE AN OPINION THAT
27 MR. RELLER -- HE ONLY TALKED TO MR. RELLER FOR A HALF HOUR OR
28 SO.

9622

1 REMEMBER THAT?
2 A. YES.
3 Q. ON THE TELEPHONE, RIGHT?
4 A. CORRECT.
5 Q. HE GAVE AN OPINION THAT MR. RELLER APPEARED TO
6 BE A PRETTY SHARP GUY ON THE TELEPHONE AND KNEW WHAT HE WAS
7 DOING, RIGHT?
8 A. I DON'T REMEMBER THAT PART OF IT, BUT IF YOU'RE
9 SAYING TO ME THAT THAT'S WHAT DR. BENOWITZ SAID IN HIS
10 TESTIMONY IN HIS DEPOSITION, I'LL AGREE TO IT, BUT I
11 DON'T -- I DON'T RECALL THAT EXACTLY.
12 Q. OKAY. WELL, IT WASN'T MEANT TO BE EXACT.
13 MR. RELLER CERTAINLY HAD AT LEAST NORMAL
14 INTELLIGENCE AS FAR AS DR. BENOWITZ WAS CONCERNED, RIGHT?
15 A. I BELIEVE SO.
16 Q. THAT'S ALL I WANT.
17 SO, ANYWAY, DR. BENOWITZ TESTIFIED MR. RELLER
18 HAD NORMAL INTELLIGENCE, AND AT LEAST NORMAL INTELLIGENCE AND
19 COGNITIVE ABILITY, RIGHT?
20 A. I BELIEVE SO, YES.
21 Q. HE TESTIFIED THAT ANYONE CAN QUIT SMOKING,
22 RIGHT?
23 A. I THINK SO, YES.
24 Q. HE TESTIFIED THAT AT ONE TIME, MR. RELLER WAS
25 ADDICTED AND HAS QUIT SMOKING?
26 A. I DON'T KNOW IF HE USED THOSE WORDS OR NOT.
27 MAYBE I SHOULD JUST BACK UP AND SAY, I'M NOT AN EXPERT ON
28 DR. BENOWITZ' TESTIMONY. IT'S TRUE THAT I'VE READ, BUT I

9623

1 DIDN'T ADMIT TO COMMIT IT TO MEMORY.
2 SO I'M AGREEING BECAUSE IT SEEMS LIKE IT FITS
3 WITH WHAT I READ, BUT I CERTAINLY HAVEN'T COMMITTED TO MEMORY
4 WHAT HE SAID EACH TIME AND IF HE ACTUALLY USED THOSE WORDS OR
5 NOT.
6 Q. LET ME END THIS SLIGHTLY DIFFERENTLY.
7 YOU WERE ASKED BY THE ATTORNEYS IN THIS CASE TO
8 CONSIDER TWO QUESTIONS, RIGHT?
9 A. RIGHT. AMONG OTHER THINGS, YES.
10 Q. QUESTION NUMBER ONE, DID MR. RELLER HAVE THE
11 COGNITIVE ABILITY TO UNDERSTAND THAT SMOKING WAS HARMFUL, AND
12 YOUR ANSWER IS, YES, HE DID, RIGHT?
13 A. WELL, THAT WASN'T QUITE THE QUESTION THEY ASKED
14 ME.
15 Q. WHAT WAS THE QUESTION THEY ASKED YOU?
16 A. WELL, WHY DON'T I GO TO MY REPORT, AND I'LL
17 JUST READ IT SO THAT I'M NOT PARAPHRASING AND THEN GETTING IT

18 WRONG.
19 THEY ASKED ME TO CONSIDER THESE TWO QUESTIONS.
20 WHETHER HE HAD THE ABILITY TO UNDERSTAND THE RISKS OF SMOKING
21 AND HIS ABILITY TO REFRAIN FROM SMOKING. IN ADDITION TO
22 DOING KIND OF AN OVERVIEW KOF HIS HISTORY AND PSYCHOLOGICAL
23 FUNCTIONING.
24 Q. OKAY. SO AS FAR AS HIS --
25 A. EXCUSE ME. I'M SO SORRY.
26 Q. DO YOU WANT SOME WATER?
27 A. I HAVE SOME. THANK YOU.
28 Q. I'LL TELL YOU WHAT. I'M TRULY, VIRTUALLY
9624

1 ALMOST DONE.
2 COULD YOU JUST READ THE FIRST QUESTION THAT THE
3 LAWYERS ASKED YOU TO ANSWER.
4 A. OKAY. WHETHER HE HAD THE ABILITY TO UNDERSTAND
5 THE RISKS OF SMOKING.
6 Q. OKAY. STOP THERE. THAT'S THE FIRST QUESTION,
7 RIGHT?
8 A. CORRECT.
9 Q. YOUR ANSWER'S YES?
10 A. YES.
11 Q. DR. BENOWITZ' ANSWER WAS YES?
12 MS. WILKINSON: OBJECTION. HE WASN'T ASKED THAT
13 QUESTION. YOUR HONOR -- I'M SORRY. I OBJECT TO THE
14 QUESTION. EVIDENCE -- OR INFORMATION IS NOT IN EVIDENCE.
15 THE COURT: WOULD YOU LIKE TO ASK IF SHE KNOWS WHAT
16 DR. BENOWITZ' ANSWER WAS?
17 MR. PIUZE: I'LL SAY IT DIFFERENTLY.
18 THE COURT: THANK YOU.
19 Q. BY MR. PIUZE: YOUR ANSWER WAS YES, AND
20 DR. BENOWITZ SAID THIS IS A GUY OF AT LEAST NORMAL
21 INTELLIGENCE, RIGHT?
22 A. YES.
23 Q. AND YOU'VE TOLD THIS JURY THAT EVERYONE,
24 EVERYONE KNOWS, HAS THE ABILITY TO UNDERSTAND THE RISKS OF
25 SMOKING, EXCEPT FOR THOSE VERY, VERY SMALL CATEGORIES THAT
26 YOU DELINEATED, SCHIZOPHRENICS OR PSYCHOTICS OR SERIOUS BRAIN
27 DAMAGE, OR LIKE THAT, CORRECT?
28 A. YES. AND, AGAIN, JUST TO ADD WHAT I SAID, JUST
9625

1 TO BE REALLY CLEAR ABOUT WHAT IT IS, I CAN TALK ABOUT WITH
2 SOME DEGREE OF EXPERTISE, I DON'T DO THESE SORTS OF GROUP
3 ANALYSES LIKE A SOCIOLOGIST, OR WHATEVER.
4 I EVALUATE INDIVIDUALS AND FORMULATE OPINIONS
5 ABOUT SPECIFIC INDIVIDUALS. SO WHAT -- WHEN I'M SAYING YES,
6 SOME OF THIS GROUP INFORMATION, YOU KNOW, IT'S -- IT'S NOT
7 REALLY FULLY WITHIN THE SCOPE OF MY EXPERTISE.
8 Q. WHEN I TOOK YOUR DEPOSITION EARLIER THIS WEEK,
9 I ASKED YOU IF YOU'D EVER MET ANYONE WHO DIDN'T HAVE THE
10 ABILITY TO STOP SMOKING, RIGHT?
11 A. YES.
12 Q. AND YOUR ANSWER WAS WHAT?
13 A. WELL, MY ANSWER WAS A NUMBER OF DIFFERENT
14 THINGS.
15 I THINK I TRIED TO SAY THAT THE PEOPLE WHO ARE
16 WILLING OR NONWILLING, AND IN MY CLINICAL EXPERIENCE, THE
17 OVERWHELMING MAJORITY OF PEOPLE ARE ABLE TO QUIT SMOKING, AND
18 THAT THERE'S A SMALL MINORITY THAT MIGHT NOT BE ABLE TO, LIKE
19 I TESTIFIED TO EARLIER IN THE MORNING.
20 Q. EXACTLY. EXACTLY.
21 MS. WILKINSON: YOUR HONOR, I WOULD OBJECT TO HIS
22 COMMENTS.

23 THE COURT: DON'T DO IT. COME ON. I'VE TALKED TO
24 YOU BOTH ABOUT IT. STOP IT, PLEASE.

25 Q. BY MR. PIUZE: I'M ONLY TRYING TO GET THIS.
26 EXCEPT FOR PEOPLE WHO -- PSYCHOTICS OR HAVE BAD
27 BRAIN TRAUMA OR EAT PAPER, THE PEOPLE YOU MENTIONED THIS
28 MORNING, YOU'VE NEVER MET ANYONE WHO COULDN'T STOP, WHO
9626
1 DIDN'T HAVE THE ABILITY TO UNDERSTAND SMOKING WAS HARMFUL,
2 RIGHT?

3 MS. WILKINSON: I'M GOING TO OBJECT, YOUR HONOR. SHE
4 SAID SHE CAN'T ANSWER FOR ALL PEOPLE. IT'S BEYOND HER
5 EXPERTISE.

6 THE COURT: NO. THE QUESTION IS WHETHER SHE MET, MET
7 ANYBODY LIKE THAT. OVERRULED.

8 ANSWER IT, PLEASE.

9 THE WITNESS: I WILL HAVE TO SAY, I'M NOT SURE,
10 BECAUSE I CERTAINLY DON'T EVALUATE EVERYBODY I MEET. BUT I
11 THINK, AS A GENERAL RULE, AGAIN, AS I'VE SAID BEFORE, I THINK
12 THE OVERWHELMING MAJORITY OF PEOPLE ARE GOING TO BE ABLE TO
13 QUIT SMOKING.

14 Q. BY MR. PIUZE: OKAY. SO THAT WAS QUESTION
15 NO. 2. COULD HE HAVE QUIT.

16 AND YOU'VE ALREADY ANSWERED THAT ONE IN
17 ADVANCE, RIGHT?

18 A. YES, I HAVE.

19 Q. OKAY. AND THAT'S WHAT DR. BENOWITZ SAID,
20 CORRECT?

21 A. THAT HE WAS -- JUST FOR ME TO GET THIS
22 STRAIGHT, THE QUESTION IS, DID DR. BENOWITZ ALSO ANSWER THE
23 QUESTION THAT MR. RELLER HAD THE ABILITY TO REFRAIN FROM
24 SMOKING?

25 IS THAT THE QUESTION?

26 Q. SURE.

27 A. OKAY. I'D HAVE TO SAY I DON'T KNOW. YOU KNOW,
28 I REALLY DON'T REMEMBER THAT FROM HIS DEPOSITION OR TRIAL
9627
1 TESTIMONY. HE MAY WELL HAVE, BUT I JUST DON'T REMEMBER IT.

2 Q. SEEING THAT MR. RELLER HASN'T SMOKED SINCE
3 NOVEMBER 14, 2000, THAT'S NOT EVEN A QUESTION ANYMORE, IS IT?

4 A. IN MY OPINION, NO, BUT I DON'T WANT TO, YOU
5 KNOW, SAY THAT DR. BENOWITZ SAID SOMETHING OR ANOTHER. I'M
6 NOT AN EXPERT ON WHAT HE SAID OR DIDN'T SAY. I JUST READ
7 THESE MATERIALS, AND I CAN'T REALLY REMEMBER.

8 Q. AND LAST, YOU ACKNOWLEDGED MR. RELLER WAS
9 NICOTINE DEPENDENT --

10 A. YES.

11 Q. -- CORRECT?

12 A. CORRECT.

13 Q. BY THE STANDARDS SET UP BY YOUR DSM-IV, LAST
14 EDITION THAT'S UP THERE WITH YOU?

15 A. THAT'S TRUE.

16 Q. AND DR. BENOWITZ SAID MR. RELLER HAD BEEN
17 ADDICTED TO NICOTINE, RIGHT?

18 A. I -- I BELIEVE SO, BUT, YOU KNOW, I WOULD
19 ASSUME HE DID, BUT RIGHT NOW, AS I SIT HERE, YOU KNOW, I
20 COULDN'T POINT TO YOU WHERE IN HIS TESTIMONY OR DEPOSITION
21 THAT HE HAD SAID THAT.

22 Q. OKAY.

23 SO I DIDN'T LOSE THE BET TOO BADLY. I'VE GOT
24 NO FURTHER QUESTIONS AT THIS TIME. THANK YOU VERY MUCH.

25 THE COURT: THANK YOU.

26 MS. WILKINSON.

27 MS. WILKINSON: I HAVE NO BET, YOUR HONOR.

28 THE COURT: THAT'S TRUE. YOU DON'T. THAT I KNOW OF.

9628

1 REDIRECT EXAMINATION

2 BY MS. WILKINSON:

3 Q. DR. SREENIVASAN, UP HERE WHERE YOU WROTE

4 "PRECONTEMPLATION," YOU WROTE "DON'T CARE," RIGHT?

5 A. YES.

6 Q. IF SOMEONE'S IN THE PRECONTEMPLATION PHASE AND
7 THEY DON'T CARE, IS THERE ANYTHING YOU CAN DO TO GET THEM OUT
8 OF THAT PHASE?

9 A. WELL, YOU COULD TRY. I MEAN, ULTIMATELY, THE
10 PERSON'S GOING TO HAVE TO MAKE THAT DECISION THEMSELVES. BUT
11 IT IS SORT OF A WALL IN TERMS OF INTERVENTION.

12 Q. AND SOMETIMES PEOPLE THAT ARE CLOSE TO YOU THAT
13 CAN TRY AND MOVE SOMEBODY OUT OF THE PRECONTEMPLATION
14 PHASE --

15 A. YES.

16 Q. -- IS THAT ALWAYS SUCCESSFUL?

17 A. NO.

18 Q. SO WHEN MR. RELLER'S WIFE TRIED TO TELL HIM TO
19 QUIT, IF HE WASN'T MOTIVATED AND READY AND DIDN'T CARE, WOULD
20 HE HAVE MOVED OUT OF THE PRECONTEMPLATION PHASE?

21 A. NO.

22 Q. HOW ABOUT WHEN HIS DAUGHTER TOLD HIM THAT
23 HE -- SHE DIDN'T WANT HIM TO SMOKE AROUND HER WHILE SHE WAS
24 PREGNANT, WOULD THAT HAVE MOVED HIM OUT OF THE
25 PRECONTEMPLATION PHASE IF HE DIDN'T CARE?

26 A. NO, IT WOULDN'T HAVE PUSHED HIM OUT.

27 Q. ALL RIGHT. HOW ABOUT SEEING THE WARNINGS ON
28 THE CIGARETTE PACKAGES?

9629

1 A. NO. THAT WOULDN'T HAVE, EITHER.

2 Q. CAN YOU TELL WHEN YOU'RE TREATING SOMEBODY WHAT
3 IT WILL BE THAT ACTUALLY MOTIVATES THAT INDIVIDUAL TO MOVE ON
4 AND TAKE ACTION TO QUIT?

5 A. I THINK IT'S VERY INDIVIDUALIZED, FRANKLY, AND
6 THERE MAY BE SOMETHING THAT STRIKES THEM THAT ULTIMATELY
7 MAKES THEM START THINKING, THIS IS A PROBLEM, AND AFTER DRUG
8 OR ALCOHOL ABUSE THEY MIGHT SEE HOW, JUST AS AN EXAMPLE, THAT
9 IT'S A BAD ROLE MODEL FOR THEIR CHILD, AND THAT, FOR WHATEVER
10 REASON, STRIKES A CHORD, AND THAT'S WHAT GETS THEM MOVING.

11 Q. I MEAN, WHILE YOU WERE LOOKING AT THE MATERIALS
12 THAT YOU RECEIVED REGARDING MR. RELLER, AND YOU WERE
13 INTERVIEWING HIM, DID YOU JUST USE THE THINGS THAT YOU PUT IN
14 YOUR NOTES TO DOCUMENT YOUR OPINION?

15 A. NO. I USE -- PARDON ME. NO. I USED THE
16 CLINICAL INTERVIEW AND INFORMATION I GOT FROM THERE AS WELL.

17 Q. AND WHEN YOU DO THESE TYPE OF PSYCHOLOGICAL
18 EVALUATIONS, HAVE YOU SEEN THAT SOME PEOPLE WHO ARE TALKING
19 TO YOU ABOUT THEIR SUBSTANCE ABUSE PROBLEMS OR OTHER PROBLEMS
20 ARE NOT ALWAYS CANDID ABOUT WHAT CAUSED THEIR PROBLEM?

21 A. WELL, THAT'S TRUE. THAT HAPPENS, YES.

22 Q. DO YOU ASSESS THAT WHEN YOU'RE LOOKING AT ALL
23 OF THE INFORMATION TO MAKE A DETERMINATION BEFORE GIVING AN
24 OPINION?

25 A. YES.

26 Q. DID YOU CONSIDER SOME OF THE OTHER INFORMATION
27 MR. PIUZE DIDN'T READ TO YOU THAT MR. RELLER SAID AND
28 MRS. RELLER SAID ABOUT WHETHER MR. RELLER WAS AWARE OF THE

9630

1 RISKS OF SMOKING?

2 A. OTHER INFORMATION MEANING?

3 Q. THINGS MRS. RELLER TESTIFIED TO HERE AT TRIAL

4 AND AT HER DEPOSITION?
5 A. YES.
6 Q. ALL RIGHT. DID YOU LEARN THAT MRS. RELLER SAID
7 HERE IN TRIAL THAT SHE SHOWED THE WARNING REGARDING LUNG
8 CANCER TO MR. RELLER?
9 A. YES.
10 Q. DID YOU SEE HER TESTIMONY THAT SHE SAID SHE AND
11 MR. RELLER WERE FAMILIAR WITH THE TESTIMONY IN 1994 OF THE
12 CEO'S FROM THE TOBACCO COMPANIES AND WHERE SHE SAID SHE AND
13 MR. RELLER DID NOT BELIEVE THOSE EXECUTIVES?
14 MR. PIUZE: I'M GOING TO OBJECT TO THAT AS AN
15 INCOMPLETE QUESTION. IT'S A MISSTATEMENT OF THE QUESTION
16 THAT WAS ASKED.
17 THE COURT: SUSTAINED. IT'S ALSO OUTSIDE THE SCOPE.
18 Q. BY MS. WILKINSON: DID YOU CONSIDER
19 MRS. RELLER'S TESTIMONY THAT SHE GAVE HERE IN TRIAL ABOUT THE
20 1994 CEO TESTIMONY IN COMING TO YOUR OPINION?
21 A. I DID.
22 Q. DID MR. RELLER EVER TRY AND USE NICOTINE GUM TO
23 QUIT?
24 A. NO.
25 Q. DID HE EVER TRY AND USE THE PATCH?
26 A. NO, HE DID NOT.
27 Q. DID HE EVER GO SEE A PHYSICIAN?
28 A. WITH RESPECT TO SMOKING CESSATION?
9631
1 Q. YES.
2 A. NO.
3 Q. WHEN YOU'RE LOOKING OVER AT THESE DIFFERENT
4 DETERMINATIONS ON READINESS TO CHANGE, IF SOMEONE WENT TO THE
5 DOCTOR OR THEY WENT TO BUY NICOTINE GUM OR THE PATCH, WOULD
6 THAT SAY ANYTHING ABOUT WHERE THEY ARE IN THIS READINESS TO
7 CHANGE MODEL?
8 A. YES.
9 Q. COULD THEY STILL BE IN THE PRECONTEMPLATION
10 PHASE, EVEN IF THEY DID GO BUY NICOTINE GUM?
11 A. THEY COULD BE IF THEY'RE BEING KIND OF COERCED
12 INTO DOING IT.
13 Q. IF THEIR WIFE SAID, GO BUY NICOTINE GUM?
14 A. YES.
15 Q. THAT WOULDN'T, IN AND OF ITSELF, SAY THEY MOVED
16 ON TO THE PREPARATION OR ACTION PHASE, CORRECT?
17 A. THAT'S CORRECT. THAT'S RIGHT.
18 Q. BUT IF THEY DO NONE OF THOSE, AS MR. RELLER DID
19 NONE OF THOSE, DID THAT FORM YOUR OPINION ABOUT WHETHER
20 MR. RELLER HAD THE MOTIVATION TO STOP SMOKING?
21 A. WELL, IT DOES IF THEY -- IF THE PERSON DID NONE
22 OF THOSE THINGS OR MR. RELLER, AND HE DIDN'T DO ANY OF THOSE
23 THINGS, IT, AGAIN, CONFIRMS THAT HE WAS IN THIS
24 PRECONTEMPLATION PHASE.
25 Q. WHEN SOMEONE'S IN THAT PRECONTEMPLATION PHASE
26 AND THEY'RE NOT BEING TREATED BY YOU, A
27 PROFESSIONAL --
28 A. OKAY.
9632
1 Q. -- IS THERE SOMETHING THE HUSBAND OR THE WIFE
2 OR THE CHILD CAN DO TO MOTIVATE THEM TO CHANGE IF THEY DON'T
3 WANT TO CHANGE?
4 A. AND IF THEY DON'T WANT TO CHANGE, THERE REALLY
5 ISN'T ANYTHING THAT I DON'T THINK A CLOSE FAMILY MEMBER COULD
6 REALLY DO IF THEY'RE REALLY NOT READY TO CHANGE.
7 Q. IS THERE ANYTHING ANYONE ELSE COULD DO, WHO'S
8 KIND OF FURTHER FROM THAT PERSON, IN OTHER WORDS, IN TERMS OF

9 THEIR RELATIONSHIP, THAT WOULD MOVE THAT PERSON OUT OF THE
10 PRECONTEMPLATION PHASE IF THEY DON'T WANT TO CHANGE?
11 A. WELL, I THINK, FOR EXAMPLE, IF THEY SAW A
12 PHYSICIAN, AND THE PHYSICIAN SAID SOMETHING, THAT MIGHT
13 ACTUALLY HELP.
14 THAT'S BEEN THE FEDERAL GOVERNMENT'S IMPETUS IN
15 MAKING EVERY CLINICIAN ASK AND ADVISE THE PERSON TO QUIT,
16 BECAUSE THEY'VE FOUND THAT ANY CLINICIAN SAYING THIS TO A
17 PATIENT, THAT SEEMS TO HAVE AN IMPACT, X-PERCENTAGE INCREASE
18 OF THE NUMBER OF PATIENTS WHO THEN QUIT SMOKING JUST BY BEING
19 GIVEN THAT LITTLE BIT OF ADVICE.
20 SO IT MAY BE THAT SOMEBODY OUTSIDE OF THE
21 FAMILY SITUATION, A PROFESSIONAL, THE PERSON'S GOING IN FOR
22 WHATEVER HEALTHCARE REASON, THAT MAY HAVE A -- MORE INFLUENCE
23 THAN, SAY, JUST A CLOSE FAMILY MEMBER.
24 Q. IS THAT TRUE IN PART BECAUSE THE PHYSICIAN IS
25 CONSIDERED A CREDIBLE AND KIND OF INDEPENDENT SOURCE?
26 A. I THINK THAT WOULD PROBABLY BE THE REASON.
27 Q. AFTER YOU WERE READ PORTIONS OF MR. RELLER'S
28 DIRECT EXAMINATION, WHERE HE TALKED ABOUT THE TOBACCO
9633
1 COMPANIES AND WHAT HE HEARD FROM THEM, DOES ANY OF THAT
2 CHANGE YOUR OPINION ABOUT MR. RELLER, WHETHER MR. RELLER HAD
3 THE ABILITY TO UNDERSTAND THE RISK OF SMOKING?
4 A. NO, IT DIDN'T CHANGE MY OPINION.
5 Q. AND DID ANY OF THAT CHANGE YOUR OPINION ABOUT
6 WHETHER MR. RELLER HAD THE ABILITY TO REFRAIN FROM SMOKING?
7 A. NO, IT DID NOT.
8 MS. WILKINSON: THAT'S ALL I HAVE, YOUR HONOR.
9 THE COURT: MR. PIUZE.
10 MR. PIUZE: NOTHING.
11 THE COURT: MAY THIS WITNESS BE EXCUSED?
12 MS. WILKINSON: YES, YOUR HONOR.
13 THE COURT: THANK YOU VERY MUCH FOR COMING. YOU'RE
14 EXCUSED. I HOPE YOUR COLD GETS BETTER.
15 THE WITNESS: THANK YOU VERY MUCH, YOUR HONOR.
16 THE COURT: NEXT WITNESS. NEXT WITNESS.
17 MS. WILKINSON: CAN I HAVE A MINUTE WITH MR. GARDNER,
18 PLEASE?
19 THE COURT: SURE.
20 MS. WILKINSON: THANK YOU, YOUR HONOR.
21
22 (SHORT PAUSE.)
23
24 MS. WILKINSON: GOOD NEWS. THE DEFENSE RESTS. WE'RE
25 DONE.
26 SO YOU CAN FINISH YOUR STORY, YOUR HONOR.
27 WE'RE DONE.
28 MR. PIUZE: I JUST GOT MY MONEY BACK.
9634
1 THE COURT: OKAY. WELL, I'M GLAD WE'RE ALL EVEN
2 AROUND HERE.
3 DO YOU HAVE -- MR. PIUZE, YOU ARE GOING TO BE
4 PUTTING ON REBUTTAL. DO YOU WANT TO THINK ABOUT THAT WHILE I
5 FINISH THE NEXT PARAGRAPH OR TWO?
6 MR. PIUZE: NO. I DON'T WANT TO THINK ABOUT IT.
7 BECAUSE I HAVE AN ANSWER. BUT IT WILL REQUIRE ME
8 CONFERRING -- YOU KNOW WHAT, READ THE NEXT PARAGRAPH OR TWO.
9
10 (SHORT PAUSE.)
11
12 MS. WILKINSON: OKAY, JUDGE.
13 THE COURT: I'LL BE QUIET. WHO AM I CHARGING THIS

14 TO?
15 MS. WILKINSON: YOU CAN CHARGE IT TO US.
16 MR. PIUZE IS GOING TO READ THE QUESTIONS AND
17 MR. GARDNER IS GOING TO BE DR. WHIDBY, WHIDBY, THE WITNESS.
18 WE'RE GOING TO CALL THE WITNESS.
19 THE COURT: OKAY.
20 MS. WILKINSON: DR. LEWIS SAID SHE COULD DO IT
21 BETTER.
22 THE COURT: I'M NOT COMMENTING ON THAT.
23 MR. GARDNER, WOULD YOU LIKE TO SIT DOWN ON THE
24 WITNESS STAND.
25 MR. GARDNER, WHO ARE YOU PLAYING?
26 WE'RE SO USED TO MR. GOLDSTEIN DOING THIS, BUT
27 WHO ARE YOU PLAYING?
28 MR. GARDNER: DR. JERRY WHIDBY.
9635
1 THE COURT: OKAY. THANK YOU, DR. WHIDBY.
2 THE CLERK: CAN WE HAVE A SPELLING, YOUR HONOR?
3 MR. GARDNER: I'M NOT SURE.
4 THE COURT: READY?
5 MR. GARDNER: YES.
6 THE COURT: I THINK YOU STILL NEED A SPELLING, DON'T
7 YOU?
8 MR. PIUZE: W-H-I-D-B-Y.
9 THE CLERK: FIRST NAME?
10 MR. PIUZE: J-E-R-R-Y.
11 THIS IS TRIAL TESTIMONY FROM -- FROM
12 SEPTEMBER 13, 2002.
13
14 (JERRY WHIDBY DEPOSITION
15 WAS READ BY THE PLAINTIFF AND
16 THE DEFENDANTS, BY
17 MR. PIUZE AND MR. GARDNER,
18 AND REPORTED AS FOLLOWS:)
19
20
21 Q. GOOD MORNING, DR. WHIDBY.
22 A. GOOD MORNING.
23 Q. WHERE DO YOU LIVE?
24 A. I LIVE IN [DELETED].
25 Q. WHERE'S THAT?
26 A. [DELETED]
27 [DELETED]
28 [DELETED].
9636
1 EVERYBODY KNOWS WHERE THAT IS.
2 Q. ARE YOU CURRENTLY EMPLOYED?
3 A. I'M A CONSULTANT FOR
4 PHILIP MORRIS, BUT I AM REALLY
5 RETIRED. TRIED TO STAY THAT WAY.
6 Q. WHEN DID YOU RETIRE?
7 A. 1998.
8 Q. AND WHO ARE -- FOR HOW LONG
9 DID YOU WORK FOR PHILIP MORRIS BEFORE
10 YOU RETIRED?
11 A. I WENT TO PHILIP MORRIS IN
12 1972 AND WORKED THERE FOR 26 YEARS.
13 Q. SO THAT WOULD BE 1998 THAT YOU
14 RETIRED?
15 A. YES, SIR.
16 Q. AND TODAY, YOU SAID YOU WERE A
17 CONSULTANT; IS THAT RIGHT?
18 A. YES, SIR.

19 Q. AND HAVE YOU BEEN A CONSULTANT
20 FOR ABOUT FOUR YEARS SINCE YOU
21 RETIRED?

22 A. YES, SIR, I HAVE.

23 Q. HAVE YOU COME HERE TODAY,
24 DR. WHIDBY, TO TELL THE JURY ABOUT THE
25 WORK THAT YOU DID AT PHILIP MORRIS
26 DURING THAT 26 YEARS?

27 A. YES, I HAVE.

28 Q. AND DID THE WORK THAT YOU DID
9637
1 AT PHILIP MORRIS DURING THAT 26 YEARS
2 HAVE ANYTHING TO DO WITH ATTEMPTS TO
3 DEVELOP A SAFE OR SAFER CIGARETTE?

4 A. YES, IT DID.

5 Q. DID IT HAVE A LOT TO DO WITH
6 THAT?

7 A. THE ENTIRE TIME I WAS THERE,
8 ALL OF IT HAD TO DO WITH THAT.

9 Q. WHAT DO YOU MEAN WHEN YOU TALK
10 ABOUT -- WHEN YOU TALK ABOUT
11 NONCONVENTIONAL CIGARETTES?

12 A. A NONCONVENTIONAL
13 CIGARETTE -- AND I NEED TO JUST, TO
14 COMPARE TO IT A CONVENTIONAL CIGARETTE
15 TO EXPLAIN IT.

16 A CONVENTIONAL CIGARETTE USES
17 TOBACCO. YOU BURN THE TOBACCO TO
18 GENERATE SMOKE FROM THE BURNED TOBACCO
19 IN A REGULAR CIGARETTE. SO THAT'S A
20 CONVENTIONAL CIGARETTE.

21 A NONCONVENTIONAL CIGARETTE
22 USES SOME HEAT SOURCE, OTHER THAN THE
23 TOBACCO ITSELF, TO GENERATE THE SMOKE
24 AND THE FLAVORS IN NICOTINE FROM THE
25 TOBACCO AND DELIVERS IT TO THE SMOKER.

26 Q. AND HAVE YOU DONE THAT AT
27 PHILIP MORRIS?

28 A. YES, WE HAVE.

9638
1 Q. WHY WAS IT THAT PHILIP MORRIS
2 WAS INTERESTED IN DEVELOPING A
3 CIGARETTE THAT HEATED INSTEAD OF
4 BURNED TOBACCO?

5 A. I BELIEVE IT WAS IN THE '60S,
6 MAYBE IN THE EARLY '70S. I THINK IT
7 WAS IN THE '60S WHEN RESEARCHERS AT
8 PHILIP MORRIS DISCOVERED THAT IF YOU
9 COULD HEAT TOBACCO AT RELATIVELY LOW
10 TEMPERATURES AND NOT BURN TOBACCO,
11 THAT YOU COULD GET A SMOKE OFF THE
12 TOBACCO THAT WOULD NOT CONTAIN MANY OF
13 THE MANY TOXIC MATERIALS THAT ENTER
14 THE SMOKE FROM BURNING TOBACCO.

15 YOU WOULDN'T HAVE ANY, FOR
16 EXAMPLE, CARBON MONOXIDE. IF YOU
17 DIDN'T BURN THE TOBACCO OR YOU DIDN'T
18 HAVE A BURNING HEAT SOURCE, YOU
19 WOULDN'T HAVE ANY OF THE OXIDES OF
20 NITROGEN. AND A LOT OF THE POLYCYCLIC
21 AROMATIC HYDROCARBONS ARE FORMED AT
22 VERY HIGH TEMPERATURE.

23 IT WAS DESIRE FOR A VERY

24 LONG PERIOD OF TIME, HAS BEEN, AT
25 PHILIP MORRIS TO PRODUCE A CIGARETTE
26 THAT DOESN'T BURN TOBACCO TO PRODUCE A
27 SMOKE.

28 Q. HAVE THERE BEEN
9639
1 DISAPPOINTMENTS ALONG THE WAY?
2 A. LOTS, UNFORTUNATELY.
3 Q. HAVE THERE BEEN IDEAS THAT
4 DIDN'T WORK?
5 A. YES.
6 Q. PROJECTS THAT A LOT OF TIME
7 AND MONEY WAS SPENT ON THAT FAILED?
8 A. YES.
9 Q. DID THAT STOP YOU?
10 A. NO.
11 Q. KEPT TRYING?
12 A. YES.
13 Q. SO HERE IS YOUR ACCORD. SO
14 THIS IS WHAT YOU TOLD THE JURY THIS
15 MORNING IS A -- EXCUSE ME. I'M SORRY.
16
17 IT'S JUST SWITCHED FROM DIRECT EXAMINATION
18 TO -- THIS IS ACTUALLY THE PLAINTIFF'S LAWYER ASKING THE
19 CROSS-EXAMINATION QUESTIONS NOW.
20 (READING):
21
22 Q. SO HERE IS YOUR ACCORD. SO
23 THIS IS WHAT YOU TOLD THE JURY THIS
24 MORNING IS A SAFER CIGARETTE?
25 A. YES, I HOPE SO.
26 Q. HAVE YOU TOLD THE JURY
27 PHILIP MORRIS HAS SPENT, IN ROUND
28 NUMBERS, ABOUT A HALF A BILLION ON
9640
1 THIS?
2 A. GETTING CLOSE TO THAT, YES.
3 Q. SO WHAT'S THE REDUCTION OF TAR
4 IN THIS CIGARETTE?
5 A. IN THIS CIGARETTE -- AND THIS
6 IS THE FIRST CIGARETTE THAT
7 PHILIP MORRIS HAS ON THE MARKET -- THE
8 TAR IS NOT TAR. THE HARMFUL
9 CONSTITUENTS IN THIS CIGARETTE HAVE
10 BEEN REDUCED RELATIVE TO AN EQUIVALENT
11 TAR CIGARETTE.
12 Q. TAR ISN'T TAR, SO YOU'RE
13 MEASURING COMPARED TO A TAR
14 EQUIVALENT?
15 A. YES.
16 Q. WHAT IS THE REDUCTION OF THE
17 TAR EQUIVALENT?
18 A. WELL, THIS -- THE ACCORD IS
19 ABOUT A 3-MILLIGRAM TAR PRODUCT, SO IT
20 WAS MEASURED RELATIVE TO A 3-MILLIGRAM
21 REFERENCE, AND THAT 3-MILLIGRAM
22 REFERENCE, WE HAVE THESE REDUCTIONS.
23 Q. A 99-PLUS PERCENT REDUCTION OF
24 TAR.
25 DO YOU FIGURE THAT'S A GOOD
26 THING?
27 A. YES.
28 Q. DO YOU FIGURE THAT A 99-PLUS

9641

1 REDUCTION OF TAR, DO YOU THINK THAT'S
2 A SAFER CIGARETTE?

3 A. I CERTAINLY HOPE SO.

4 Q. DO YOU THINK A 99 PERCENT
5 REDUCTION OF TAR REDUCES THE ODDS OF
6 GETTING LUNG CANCER?

7 A. AGAIN, I HOPE SO. I THINK SO.

8 Q. IS THIS SOMETHING THAT YOU
9 HAVE JUST STARTED THINKING ABOUT
10 RECENTLY?

11 A. NO.

12 Q. OR IS THIS SOMETHING THAT
13 YOU'VE THOUGHT ABOUT FOR A LONG TIME?

14 A. SOMETHING I'VE THOUGHT ABOUT
15 FOR A LONG TIME.

16

17 MR. PIUZE: EXCUSE ME ONE SECOND. I'M JUST GOING TO
18 GO A SMIDGEN MORE DOWN TO LINE 19.

19 MR. GARDNER: ON THE SAME PAGE WE WERE JUST ON?

20 MR. PIUZE: YES. YES.

21 DO YOU KNOW WHAT A SMIDGEN IS, DR. WHIDBY?

22 MR. GARDNER: IT'S ABOUT THIS MUCH.

23 (READING):

24

25 Q. ARE YOU FAMILIAR WITH THE TERM
26 TRINITY?

27 A. I'VE HEARD THAT TERM, YES.

28 Q. WHERE?

9642

1 A. AT PHILIP MORRIS.

2 Q. YOU KNOW THAT TRINITY REFERS
3 TO CAMBRIDGE CIGARETTES?

4 A. YES, IT REFERS TO THE PROJECT
5 UNDER WHICH CAMBRIDGE WAS DEVELOPED.

6

7 MR. PIUZE: THAT'S THE END OF THE TESTIMONY FROM
8 DR. WHIDBY.

9 THE COURT: MAY THIS WITNESS BE EXCUSED?

10 I GUESS SO. HE'S LEAVING.

11 MR. PIUZE: YOUR HONOR, I NEED SOME GUIDANCE FROM THE
12 COURT. THE ANSWER TO YOUR QUESTION IS, I DON'T HAVE A
13 REBUTTAL CASE, AS THERE IS NO REBUTTAL CASE.

14 THE COURT: DO WE HAVE SOME DOCUMENTS THAT NEED TO BE
15 INTRODUCED?

16 MR. PIUZE: BUT THERE ARE SIGNIFICANT DOCUMENTS THAT
17 WE DISCUSSED EARLIER, AND SOMETHING SHOULD BE DONE WITH THEM.

18 I SUGGEST THAT THERE'S GOT TO BE, JUST -- WE'VE
19 GOT TO JUST GET OUR HEADS TOGETHER SO IT DOESN'T GET
20 INTERRUPTED. JUST A SHORT TIME.

21 THE COURT: WHAT DO YOU WANT?

22 DO YOU WANT ME TO LET THE JURY GO OUT FOR A
23 MINUTE?

24 WHAT DO YOU WANT?

25 DO YOU WANT TO SEE ME AT SIDEBAR?

26 I'M CONFUSED. HELP ME OUT.

27 MR. PIUZE: DR. WHIDBY SAID LET THEM STRETCH.

28 THE COURT: OVER HERE, THERE?

9643

1 MR. PIUZE: OKAY. THAT'S FINE.

2 WHAT DO YOU WANT, DR. WHIDBY?

3 MR. GARDNER: I'D LET THEM GO OUT.

4 THE COURT: ALL RIGHT, DOCTOR, WE'LL TAKE YOUR

5 ADVICE, THEN.
6 YOU'RE ADMONISHED THAT IT'S YOUR DUTY NOT TO
7 CONVERSE AMONG YOURSELVES OR WITH ANYONE ON ANY SUBJECT
8 CONNECTED WITH THIS TRIAL OR TO FORM OR EXPRESS ANY OPINION
9 THEREON UNTIL THE CAUSE IS FINALLY SUBMITTED TO YOU.
10 HOW LONG WILL IT TAKE FOR YOU FOLKS TO HAVE
11 YOUR LITTLE CONFAB, SO I'LL TELL THE JURY WHEN TO COME BACK?
12 DO YOU WANT 1 O'CLOCK?
13 DO YOU WANT 1:05 J?
14 MS. WILKINSON: SINCE MR. PIUZE IS WORSE AT
15 ESTIMATING TIME --
16 MR. PIUZE: WHY DON'T WE TRY FOR 1:00, YOUR HONOR.
17 THE COURT: I'LL SEE YOU FOLKS BACK AT 1:00.
18 WE'RE STAYING ON THE RECORD, I ASSUME.
19
20 (THE FOLLOWING PROCEEDINGS WERE HELD
21 IN OPEN COURT OUT OF THE PRESENCE
22 OF THE JURY:)
23
24 THE COURT: BACK IN THE MATTER OF RELLER VERSUS
25 PHILIP MORRIS BC 261796.
26 WE'RE OUTSIDE THE PRESENCE OF THE JURY.
27 ALL COUNSEL PREVIOUSLY STATED ARE PRESENT.
28 HOW CAN I HELP YOU FOLKS?
9644
1 MR. PIUZE: THERE'S TWO REMAINING ISSUES. ONE'S AN
2 EVIDENTIARY CALL. THE OTHER IS WE'RE GOING TO STIPULATE TO
3 AN AMOUNT OF MEDICALS.
4 THE COURT: OKAY.
5 YOU WANT TO GIVE ME SOMETHING TO READ TO THE
6 JURY?
7 MR. PIUZE: YES. I -- MY MATERIAL IS DOWNSTAIRS. SO
8 IN ORDER FOR ME TO MAKE THE STIPULATION, I'VE GOT TO RUN DOWN
9 TO GRAB THE STUFF.
10 THE COURT: OKAY. YEAH.
11 MR. PIUZE: OKAY.
12 THE COURT: AND LET'S DO THE OTHER -- CAN WE DO THE
13 OTHER ONE RIGHT NOW?
14 MR. PIUZE: YES.
15 MS. WILKINSON: YOUR HONOR, MR. PIUZE AND I HAVE BEEN
16 DISCUSSING DOCUMENTS HE WANTS TO MOVE IN.
17 THE COURT: YOU WANT TO CALL IT A NUMBER?
18 MS. WILKINSON: YES. IF YOU WILL GIVE ME THE NEXT
19 NUMBER, I WILL MARK IT.
20 THE COURT: 402.
21 MS. WILKINSON: THIS IS, YOUR HONOR, A
22 FEBRUARY 11, 2000 E-MAIL FROM A WOMAN NAMED LOREEN,
23 L-O-R-E-E-N, MC ALPIN, M-C, CAPITAL, A-L-P-I-N. SUBJECT
24 MATTER IS PHILIP MORRIS' EXTERNAL RESEARCH PROGRAM, AND IT'S
25 TALKING ABOUT SETTING UP THE EXTERNAL RESEARCH PROGRAM.
26 I JUST THINK IT'S IRRELEVANT. IT WAS IN 2000.
27 HAS NOTHING TO DO WITH MR. RELLER.
28
9645
1 (I.D. 402 - 2-11-00 E-MAIL)
2
3 THE COURT: WHY DO WE NEED IT, MR. PIUZE?
4 WHAT'S THE RELEVANCE OF THE 2000 DOCUMENT, A
5 FEBRUARY 2000 DOCUMENT?
6 MR. PIUZE: YEAH. THIS IS WHERE DR. DOMINO GOT HIS
7 MONEY FROM THE PHILIP MORRIS EXTERNAL RESEARCH PROGRAM. THIS
8 IS THE -- THIS AN AREA THAT I ATTEMPTED TO DISCUSS WITH A
9 COUPLE OF WITNESSES, AND THE COURT SAID NO FOUNDATION AT THAT

10 TIME.

11 SO HERE'S THE FOUNDATION. THAT WITH THE END OF
12 THE CTR, PHILIP MORRIS HAS OPENED ITS OWN VERSION OF SAME.
13 THEY CALL IT THEIR EXTERNAL RESEARCH PROGRAM.

14 THE COURT: THAT'S TRUE. HE DID TESTIFY THAT THAT'S
15 WHERE HE WAS GETTING MONEY FROM.

16 MR. PIUZE: THEREFORE, IT'S FUNDED. DR. DOMINO
17 IS -- ONE OF THE THINGS DR. DOMINO HAD TO SAY IS HE
18 VOLUNTARILY STOPPED THE PROJECT THEY WERE FUNDING FOR HALF A
19 MILLION DOLLARS BECAUSE THERE'S FUNDING -- THAT IT ISN'T
20 GOING ANYPLACE BECAUSE IT'S NOT NEW RESEARCH.

21 AND THAT'S EXACTLY OUR CLAIM. THAT'S EXACTLY
22 ONE OF OUR CLAIMS AGAINST THE CTR. FOR ALL OLD TIMES' SAKE,
23 YEAH, THEY THREW MONEY IN, BUT THEY THREW MONEY IN
24 DIVERSIONARY AREAS.

25 THE COURT: ACTUALLY, THAT'S NOT QUITE WHAT HE SAID,
26 MR. PIUZE.

27 HE SAID HE WAS GETTING OLDER, AND HE WANTED
28 SOMETHING THAT WAS GOING TO HAVE A RESULT FASTER, AND,
9646

1 GEE-WHIZ, YOU KNOW, HE HAD OTHER THINGS THAT HE WANTED TO DO.
2 MR. PIUZE: HE ALSO SAID IT WASN'T NEW.
3 THE COURT: THAT'S TRUE. BUT SOMETHING
4 BECAUSE -- SIMPLY BECAUSE SOMETHING ISN'T NEW, MR. PIUZE,
5 DOESN'T MEAN THAT SOMETHING CAN'T BE LOOKED AT IN A DIFFERENT
6 WAY OR GATHERED MORE DATA ON SOMETHING. I MEAN --
7 MR. PIUZE: JUST LIKE --
8 THE COURT: -- I DON'T HAVE A -- I THINK YOU'VE
9 MISUNDERSTOOD DR. DOMINO'S TESTIMONY FOR THAT.

10 BUT, MS. WILKINSON, DON'T THINK THE FACT -- I
11 MEAN, YEAH, IT'S RELATED TO PHILIP MORRIS. IT'S, I GUESS,
12 IT'S -- IT SHOWS SOME BIAS ON BEHALF OF DR. DOMINO, ARGUABLY.

13 MS. WILKINSON: BUT THAT FACT CAME OUT THAT HE WAS
14 FUNDED BY PHILIP MORRIS, YOUR HONOR. THIS IS TALKING
15 ABOUT -- MR. PIUZE ISN'T TRYING TO GET IT IN FOR THAT. HE'S
16 JUST TRYING TO GET IT IN BECAUSE IT SAYS, "SINCE THE
17 DISSOLUTION OF CIAR AND CTR."
18 HE'S TRYING TO USE IT TO BOLSTER DR. CUMMINGS.
19 I THINK YOU DIDN'T LET THIS IN WITH DR. CUMMINGS, AND NOW
20 HE'S TRYING TO GET IT IN, SAYING IT'S IMPEACHMENT OF
21 DR. DOMINO. DR. DOMINO, THAT WAS DISCLOSED. I JUST DON'T
22 SEE WHY WE NEED IT.

23 THE COURT: MAY I SEE IT AGAIN FOR A SECOND?
24 MS. WILKINSON: SURE.

25 THE COURT: I DON'T REMEMBER THIS ONE ACTUALLY, WITH
26 DR. CUMMINGS, BECAUSE HE WASN'T -- THERE WAS ANOTHER THING HE
27 WASN'T SURE ABOUT WHAT SOMETHING MEANT, OR ANYWAY, THERE WAS
28 SOME FOUNDATION ISSUES AS TO HIM. BUT --
9647

1 MS. WILKINSON: HE DID TRY AND GET IT IN, YOUR HONOR,
2 AND I BELIEVE THAT CTR HAD GONE AWAY, BUT IT STARTED UNDER
3 SOME OTHER NAME, AND YOU DIDN'T ALLOW THAT NOW.

4 THE COURT: BECAUSE HE DIDN'T KNOW.

5 MS. WILKINSON: RIGHT. NOW MR. PIUZE IS TRYING TO
6 USE THIS FOR THAT.

7 THE COURT: I THINK YOU FOLKS HAVE A TEMPEST IN A
8 TEAPOT HERE.

9 MS. WILKINSON: THAT'S SO UNLIKE US, JUDGE.

10 THE COURT: THE OBJECTION IS NOTED AND RESPECTFULLY
11 OVERRULED. THERE IS -- I LOOK AT IT UNDER RELEVANCE GROUND
12 AND 352.

13 MR. PIUZE: I JUST NEED ONE MORE MINUTE HERE.
14 WE HAVE FOUND THE DOCUMENT I JUST GAVE YOU

15 RIGHT OFF OF THE WEBSITE, AND WE SHOWED THAT TO YOU BEFORE
16 YOU POINTED OUT WE DIDN'T HAVE FOUNDATION AND ASKED US TO GET
17 IT.

18 WE DO HAVE THE FOUNDATION, AND I WANT TO MOVE
19 THAT DOCUMENT IN, TOO.

20 MS. WILKINSON: YOUR HONOR, THIS IS A FEBRUARY --
21 THE COURT: LET'S MARK -- IT'S 403. AND 403 IS GOING
22 TO BE A WHAT?

23 MS. WILKINSON: IT IS A FEBRUARY 10TH, 2000 LETTER
24 FROM THE LAW FIRM CALLED HUNTLEY & WILLIAMS TO
25 KATHRYN DIXON, THE CHIEF COUNSEL AT THE SEC. AND IT IS --

26
27 (I.D. 403 - 2-10-00 LETTER)
28

9648

1 THE COURT: AT THE SEC?

2 MS. WILKINSON: YES

3 THE COURT: I JUST WANT TO MAKE SURE I HEARD YOU,
4 THAT WAS ALL.

5 MS. WILKINSON: YOU DID, YOUR HONOR.

6 AND RESPONDING TO A LETTER FROM A LAWYER THERE
7 TALKING ABOUT WHETHER THEY HAVE A DISAGREEMENT OVER
8 RULE 14A THROUGH OPEN PAREN (8), CLOSED PAREN, OPEN PAREN
9 (I), CLOSED PAREN, OPEN PAREN (7), CLOSED PAREN, AND
10 MR. PIUZE IS HIGHLIGHTING A PORTION THAT SAYS (READING):

11
12 MR. NEUHAUSER'S
13 LETTER -- THAT'S THE OTHER
14 LAWYER -- MISCHARACTERIZES THE
15 COMPANY'S WEBSITE AS CONSTITUTING A
16 PUBLIC ADMISSION THAT CIGARETTES CAUSE
17 ILLNESS. IT DOES NOT.

18
19 I OBJECT BECAUSE THIS IS TOTALLY IRRELEVANT.
20 IT'S GOING TO BE CONFUSING UNDER 352. THEY'RE HAVING SOME,
21 YOU KNOW, DEBATE UNDER THE RULES OF THE SEC ABOUT WHETHER --
22 THE COURT: MAY I SEE IT, PLEASE?

23 MS. WILKINSON: THE STATEMENT ON THE WEBSITE WAS AN
24 ADMISSION FOR PURPOSES OF THE SECURITIES AND EXCHANGE
25 COMMISSION.

26 THE COURT: ANYTHING YOU WANT TO SAY, MR. PIUZE?

27 MR. PIUZE: SURE. PHILIP MORRIS BROUGHT OUT ITS
28 FIRST ANNOUNCEMENT THAT WE JUST MARKED AS 402.

9649

1 THE COURT: 403.

2 MR. PIUZE: I'M LOOKING AT --

3 THE COURT: THIS IS 403.

4 MR. PIUZE: EXCUSE ME.

5 PHILIP MORRIS BROUGHT OUT ITS FIRST
6 ANNOUNCEMENT THAT WAS JUST MARKED, YOU'RE TELLING ME, AS 403?

7 THE COURT: WAIT A SECOND, GUYS. I HAVE 403 IN MY
8 HAND.

9 LET'S TRY THIS. WHATEVER YOU HAVE IS 404, AND
10 WHAT IS 404, FOLKS?

11 MR. PIUZE, HELP ME OUT HERE.

12 MR. PIUZE: 404 IS A 10-13-99 ANNOUNCEMENT PUT UP ON
13 ITS WEBSITE CALLED, "CIGARETTE SMOKING, HEALTH ISSUES FOR
14 SMOKERS."

15 THE COURT: SO IT'S AN OCTOBER 13TH, 1999
16 PHILIP MORRIS WEBSITE ANNOUNCEMENT?

17 MR. PIUZE: YES.

18
19 (I.D. 404 - 10-13-99 WEBSITE ANNOUNCEMENT)

20
21 THE COURT: YEAH.
22 MR. PIUZE: AND IT SAYS (READING):
23

24 THERE IS AN OVERWHELMING MEDICAL
25 AND SCIENTIFIC CONSENSUS THAT
26 CIGARETTE SMOKING CAUSES LUNG CANCER,
27 HEART DISEASE, EMPHYSEMA, AND OTHER
28 SERIOUS DISEASES IN SMOKERS. SMOKERS

9650
1 ARE FAR MORE LIKELY TO DEVELOP SERIOUS
2 DISEASES LIKE LUNG CANCER THAN
3 NONSMOKERS. THERE IS NO SAFE
4 CIGARETTE. THESE ARE AND HAVE BEEN
5 THE MESSAGES OF PUBLIC HEALTH
6 AUTHORITIES WORLDWIDE. SMOKERS AND
7 POTENTIAL SMOKERS SHOULD RELY ON THESE
8 MESSAGES IN MAKING ALL SMOKING-RELATED
9 DECISIONS.

10
11 AND THEN IT GOES ON ABOUT WHEREVER -- WHERE TO
12 CLICK FOR PUBLIC HEALTH LINKS.

13 SUBSEQUENT TO THIS TIME, THE EXHIBIT THE COURT
14 HAS IN FRONT OF IT NOW, 403, WAS WRITTEN DENYING BY
15 PHILIP MORRIS' LAWYERS THAT THIS CONSTITUTED ANY KIND OF AN
16 ADMISSION THAT SMOKING CAUSED LUNG CANCER OR OTHER DISEASE.

17 SUBSEQUENT TO THE DOCUMENT IN QUESTION,
18 YOUR HONOR, THAT YOU NOW HAVE, IN OCTOBER OF 2000,
19 PHILIP MORRIS ULTIMATELY MADE THAT ADMISSION.

20 I BELIEVE THIS DOCUMENT IS RELEVANT TO SHOW
21 EXACTLY WHEN AN ADMISSION WAS MADE, EXACTLY WHEN AN ADMISSION
22 WASN'T MADE, AND EXACTLY HOW LONG IT WAS THAT PHILIP MORRIS
23 CORPORATELY WAS SAYING, WE DON'T ADMIT ANY SUCH THING.

24 THE COURT: THE PROBLEM THAT I HAVE, MR. PIUZE, IS
25 THAT IF YOU READ THE NEXT SENTENCE BELOW WHAT YOU'RE
26 CHARACTERIZING AS AN ADMISSION, THERE'S A CLARIFICATION.

27 ALL RIGHT. FIRST PARAGRAPH (READING):
28

9651
1 ON BEHALF OF PHILIP MORRIS
2 COMPANIES, I AM RESPONDING TO A LETTER
3 DATED FEBRUARY 4TH, 2000 FROM
4 PAUL M. NEUHAUSER, N-E-U-H-A-U-S-E-R,
5 ESQUIRE. MR. NEUHAUSER'S LETTER
6 RELATES TO A SHAREHOLDER PROPOSAL
7 REQUIRING THE COMPANY TO REPORT TO
8 SHAREHOLDERS WITHIN ONE YEAR THE
9 DETAILS OF HOW THE COMPANY INTENDS TO
10 ADDRESS THE ISSUE THAT ITS CIGARETTE
11 PRODUCTS, QUOTE, "CAUSES ILL HEALTH
12 AMONG HUMANS," CLOSED QUOTE, AND HOW
13 IT, QUOTE, "INTENDS TO CORRECT THE
14 DEFECTS IN THE PRODUCTS THAT CAUSE
15 SUCH SICKNESSES," CLOSED QUOTE.

16
17 AND THEN IT GOES ON AND TALKS ABOUT SOME RULE
18 14A(8)(K), AND THEN THE THIRD PARAGRAPH, IT SAYS (READING):
19

20 WITH RESPECT TO THE
21 SUBSTANTIVE ISSUE, WE DISAGREE WITH
22 MR. NEUHAUSER'S DEPOSITION THAT THE
23 PROPOSAL DOES NOT VIOLATE RULE
24 14A(8)(I)(7). MR. NEUHAUSER'S LETTER

25 MISCHARACTERIZES THE COMPANY'S WEBSITE
26 AS CONSTITUTING A PUBLIC ADMISSION
27 THAT CIGARETTES CAUSE ILLNESS. IT
28 DOES NOT.

9652

1 THE VERY QUOTATION INCLUDED IN MR. NEUHAUSER'S
2 LETTER MAKES IT CLEAR THAT THE WEBSITE IS CONVEYING THE
3 MESSAGES OF PUBLIC HEALTH AUTHORITIES AND URGING SMOKERS AND
4 POTENTIAL SMOKERS TO RELY ON THOSE MESSAGES.

5 THE PROBLEM IS, MR. PIUZE, THAT -- I ADMIT IT'S
6 A TECHNICALITY, BUT THERE IS A DIFFERENCE HERE.

7 YOUR REQUEST IS RESPECTFULLY DENIED AS TO 403.
8 IF YOU WANT TO PUT 404 ON, THAT'S AN OKAY
9 THING. THAT'S THE WEBSITE. BUT NO AS TO 403 ON RELEVANCE
10 AND 352 GROUNDS. I THINK IT IS LIKELY TO LEAD TO CONFUSION
11 AMONG THE JURORS.

12 MR. PIUZE: I'M GOING -- IN THAT CASE, I'M GOING TO
13 WITHDRAW 404. 404 WAS A SETUP FOR THAT.

14 MS. WILKINSON: WE WOULD LIKE 404 IN, YOUR HONOR.
15 THE COURT: THEN YOU CAN PUT IT IN.

16 MS. WILKINSON: THANK YOU.
17 THE COURT: AT YOUR TIME.

18 HERE YOU GO.

19 MR. PIUZE: NOW, YOUR HONOR --
20 THE COURT: I DON'T KNOW WHY YOU'D WANT IT IN, BUT
21 YEAH, FINE.

22 MR. PIUZE: IF I CAN RUN DOWN AND GET THAT.
23 THE COURT: YOU CAN WALK.

24 MS. WILKINSON: I HAVE ONE OTHER THING.
25 THE COURT: YES.

26 MS. WILKINSON: WE HAVE A DECLARATION FROM
27 MR. RELLER'S EXPERT, HIS ASBESTOS EXPERT, DECLARATION OF
28 CHARLES AY.

9653

1 THE COURT: HOW DO YO SPELL THAT?
2 MS. WILKINSON: A-Y. AND WE'D LIKE TO MOVE THAT IN.
3 AND THAT WOULD BE 405, YOUR HONOR.

4
5 (I.D. 405 - AY EXPERT DECLARATION)
6

7 THE COURT: DO YOU HAVE ANY OBJECTION FOR THIS?
8 MR. PIUZE: SURE. AND WHAT'S THE PURPOSE FOR THE
9 DECLARATION?

10 MS. WILKINSON: TO SHOW THAT -- WELL, THIS IS A SWORN
11 STATEMENT BY MR. RELLER'S EXPERT TO SHOW THAT HE WAS EXPOSED
12 TO ASBESTOS AND IT --

13 THE COURT: MR. PIUZE, WHY DON'T YOU WALK DOWNSTAIRS.
14 LET ME READ THIS. BECAUSE IT LOOKS LIKE IT'S ABOUT FOUR OR
15 FIVE PAGES. SO BY THE TIME YOU GET BACK, I WILL HAVE READ
16 IT.

17
18 (RECESS.)
19

20 THE COURT: STILL IN THE MATTER OF VERSUS RELLER
21 VERSUS PHILIP MORRIS, BC 261796.

22 THE RECORD SHOULD REFLECT THAT WE'RE STILL
23 OUTSIDE THE PRESENCE OF THE JURY.

24 ALL PARTIES PREVIOUSLY STATED ARE PRESENT.
25 OKAY. MR. PIUZE, MS. WILKINSON, MR. GARDNER, I
26 HAVE READ AND REVIEWED THE DECLARATION OF CHARLES AY IN THE
27 CASE OF RELLER VERSUS PHILIP MORRIS, CASE NO. BC 261796. IT
28 IS SET FORTH A HEARING DATE BEFORE JUDGE -- JUDGE MORTIMER ON

9654

1 OCTOBER 1ST, 2001. I DON'T KNOW WHEN IT WAS FILED.
2 ALL RIGHT. I'VE ALSO REVIEWED EVIDENCE CODE
3 SECTIONS 452 AND 12 -- HOLD ON HERE -- 1222.
4 THE COURT: MR. PIUZE. YOUR OBJECTION IS?
5 MR. PIUZE: RELEVANCE. IN THIS CASE, NO DOCTOR, NO
6 EVIDENCE THAT ASBESTOS CAUSED LUNG CANCER. NONE.
7 AND IF NO -- AND I'LL LIST THEM -- BURNS,
8 HAMMER, ALLARD, KASABIAN, RUBIN. THERE IS NO EVIDENCE, NO
9 MEDICAL EVIDENCE, THAT ASBESTOS CAUSED HIS CANCER, AND NO
10 MEDICAL EVIDENCE. NO ONE ON CAUSATION. ZERO. IT'S
11 IRRELEVANT. CANNOT -- YOU JUST CAN'T GO ANYWHERE. IT'S
12 IRRELEVANT.
13 THE COURT: MR. PIUZE, I DIDN'T SAY ANYTHING.
14 MR. PIUZE: OKAY.
15 THE COURT: OKAY.
16 MS. WILKINSON, DO YOU WANT TO COUNTER, IF YOU
17 CAN, COUNTER MR. PIUZE'S STATEMENTS?
18 MS. WILKINSON: YES, YOUR HONOR.
19 DR. HAMMAR WAS THE ONLY WITNESS WHO CAME IN
20 HERE AND ACTUALLY DIAGNOSED MR. RELLER WITH THE
21 PSEUDOMESOTHELIOMATOUS ADENOCARCINOMA, THE VERY, --
22 THE COURT: OUT OF PRACTICE WITH THAT WORD, AREN'T
23 YOU?
24 MS. WILKINSON: -- THAT HE HAS, AND HE SAID THAT THAT
25 DISEASE CAN BE CAUSED BY ASBESTOS, AND, IN FACT, MR. GARDNER
26 PAINFULLY POINTED OUT TO HIM THAT EVERY TIME HE WROTE ABOUT
27 THAT DISEASE, HE CALLED IT AN ASBESTOS-RELATED DISEASE, NOT A
28 SMOKING-RELATED DISEASE.

9655

1 NUMEROUS WITNESSES SAID THEY DID NOT REVIEW HIS
2 ASBESTOS EXPOSURE WHEN COMING TO THEIR DETERMINATION. SO,
3 OBVIOUSLY, THE REASON WHY WE WANT TO INTRODUCE THIS IS TO
4 SHOW THAT THOSE WITNESSES COULD HAVE CONSIDERED THIS, AND
5 THIS -- THAT THEY DIDN'T DO IT, AND THIS MIGHT HAVE CHANGED
6 THEIR DETERMINATION, INCLUDING DR. HAMMAR, WHO SAID, I TOLD
7 MR. PIUZE THIS WAS AN ISSUE AND THAT WE COULD FOLLOW UP AND
8 DO CERTAIN TESTS AND THINGS. THERE WAS NO FOLLOW-UP.
9 SO THIS IS TO SHOW THE EVIDENCE WAS THERE.
10 IT'S A SWORN STATEMENT OF THE PARTY AND --
11 THE COURT: YOU DON'T MEAN THAT THE EVIDENCE WAS
12 THERE. THAT THE -- THAT THERE WAS YOUR RIGHT -- THERE WAS
13 ASBESTOS IN THE AIR.
14 MS. WILKINSON: RIGHT. THERE WAS EVIDENCE OF
15 ASBESTOS EXPOSURE DR. HAMMAR SHOULD HAVE LOOKED AT.
16 WHETHER HE WOULD HAVE CHANGED HIS DIAGNOSIS OR
17 NOT, WE DON'T KNOW, BECAUSE HE WASN'T PERMITTED TO LOOK AT
18 THAT. BUT IT WAS AVAILABLE. THAT WAS ONE OF THE ISSUES THAT
19 WE RAISED WITH DR. HAMMAR AND OTHER WITNESSES, INCLUDING
20 DR. BURNS, THAT HE HAD NEVER LOOKED AT MR. RELLER'S ASBESTOS
21 EXPOSURE.
22 SO, OF COURSE, WE WANT TO ARGUE TO THE JURY
23 THAT THEY DIDN'T DO A THOROUGH REVIEW OF ALL OF THE EVIDENCE
24 WHEN COMING TO THEIR DIAGNOSIS. ALL WE HAVE TO DO IS SAY
25 WHETHER MR. RELLER HAS PROVED SMOKING CAUSED HIS CANCER. WE
26 DON'T HAVE TO PROVE ASBESTOS DID. WE JUST HAVE TO SAY THAT
27 HE DIDN'T PROVE THAT SMOKING CAUSED HIS CANCER, AND THAT'S
28 WHAT WE WANT IT FOR.

9656

1 THE COURT: YOU KNOW, I UNDERSTAND YOUR ARGUMENT, AND
2 I DON'T THINK THINGS ARE QUITE AS CLEAR AS MR. PIUZE WAS
3 STATING. BUT ALL YOU HAVE TO PROVE IN THIS CASE IS A
4 SUBSTANTIAL FACTOR.
5 MS. WILKINSON: RIGHT.

6 THE COURT: AND HE DOESN'T.
7 THE REASON I'M SAYING THAT IS THAT MR. PIUZE
8 DOESN'T HAVE TO PROVE THAT X WAS THE ONLY CAUSE, WHATEVER X
9 MIGHT BE. AND --
10 MS. WILKINSON: OF COURSE, YOUR HONOR, HE'S EXACTLY
11 RIGHT, AND THAT'S OUR POINT, IS HIS WITNESSES CAN'T SAY IT
12 WAS A SUBSTANTIAL FACTOR, BECAUSE THEY DIDN'T -- WHAT WE'RE
13 GOING TO TRY TO ARGUE IS THEY DIDN'T LOOK AT ALL OF THE
14 EVIDENCE.
15 I MEAN, IT WOULD BE EASY IF THEY HAD LOOKED AT
16 THE ASBESTOS EXPOSURE AND SAID, YOU KNOW WHAT, MAYBE IT WAS
17 BOTH, BUT IT WAS PRIMARILY SMOKING, OR THAT WAS A SUBSTANTIAL
18 FACTOR. HE CAN ARGUE THAT. HE CAN MAKE FUN OF US FOR MAKING
19 THAT ARGUMENT, WHICH I'M SURE HE WILL DO. BUT WE HAVE A
20 RIGHT TO MAKE THE ARGUMENT THAT HIS WITNESSES FAILED TO LOOK
21 AT THE EVIDENCE THAT WAS WITHIN HIS CUSTODY AND CONTROL, THAT
22 HE HAD AN EXPERT WHO HAD ANALYZED, AND THAT THE PEOPLE WHO
23 CAME IN TO PRESENT CAUSATION EVIDENCE DIDN'T CONSIDER THAT
24 EVIDENCE.
25 MR. PIUZE: I'VE GOT -- IF YOU'RE DONE, I'VE GOT A
26 RESPONSE.
27 THE COURT: I'M WAITING FOR IT.
28 MR. PIUZE: OKAY. NUMBER ONE, HAMMAR SAID TO ME,
9657
1 IF -- I MEAN, WHEN I SAY TO ME, I MEAN IN THIS COURTROOM --
2 THE COURT: WHEN HE WAS ON THE WITNESS STAND. I'M
3 LISTENING. GO ON.
4 MR. PIUZE: -- IF I'M SOMEHOW WRONG, AND IF ASBESTOS
5 PLAYED A ROLE IN THIS CASE, WHICH I DON'T THINK IT DID, THEN
6 SMOKING STILL PLAYED A ROLE, AND SMOKING WAS A SUBSTANTIAL
7 FACTOR. I ABSOLUTELY GOT THAT OUT OF HIM.
8 SECONDLY. BOTH BURNS, RUBIN AND HAMMAR, ALL
9 THEM SAID THAT THE TYPE OF EXPOSURE HE MIGHT HAVE GOTTEN IN
10 THIS SETTING COULD NOT --
11 THE COURT: COULDN'T CAUSE OR BE VERY UNLIKELY TO
12 CAUSE.
13 MS. WILKINSON: HOW WOULD THEY DO KNOW THAT, JUDGE,
14 WITHOUT THE --
15 MR. PIUZE: EXCUSE ME. EXCUSE ME.
16 SO THERE YOU HAVE IN FRONT OF YOU A DOCUMENT
17 THAT SAYS, OKAY, WELL, THERE WAS EXPOSURE, BUT IT DOESN'T
18 SAY, ON A SCALE OF 1 TO 1,000, WHETHER IT'S A 1 OR WHETHER
19 IT'S 1,000. IT GOES NOWHERE. IT CAN ONLY LEAD TO
20 SPECULATION. IT GOES NOWHERE.
21 THE FACT REMAINS THAT THERE'S FIVE DOCTORS IN
22 THIS CASE WHO HAVE SAID THIS ISN'T CAUSED BY ASBESTOS.
23 THERE'S THREE DOCTORS THAT SAID IN THIS KIND OF A SETTING,
24 YOU CAN'T GET ENOUGH ASBESTOS EXPOSURE, AND THAT INCLUDED
25 RUBIN. AND THIS TELLS US NOTHING ABOUT THE QUANTITY OR
26 QUALITY OF ASBESTOS EXPOSURE. IT CAN ONLY LEAD TO
27 SPECULATION. IT JUST GOES NOWHERE.
28 THE COURT: MS. WILKINSON, YOU'RE BURNING TO SAY
9658
1 SOMETHING.
2 MS. WILKINSON: JUST ONE THING, YOUR HONOR.
3 THE SPECULATION WAS THE WITNESSES WHO FAILED TO
4 LOOK AT THE ASBESTOS EXPOSURE AND ANSWERED A HYPOTHETICAL
5 FROM MR. PIUZE ABOUT WHAT TYPE OF ASBESTOS EXPOSURE WOULD BE
6 SUFFICIENT.
7 SO WE ARE JUST TRYING TO SAY, HERE IS THE
8 INFORMATION THEY DID NOT LOOK AT. THERE'S AN INSTRUCTION
9 THAT WE ASKED FOR THAT, MR. PIUZE AGREED TO, WHICH TALKS
10 ABOUT --

11 THE COURT: IN THE EXPERTS AND WHETHER OR NOT --
12 MS. WILKINSON: NO, NO. I WAS GOING TO TALK ABOUT
13 THE -- I'M SURE YOU'RE RIGHT, YOUR HONOR, BUT THE INSTRUCTION
14 I WAS GOING TO POINT TO IS THE BAJI INSTRUCTION IN THE 2
15 SERIES THAT TALKS ABOUT FAILURE TO PRODUCE STRONGER EVIDENCE.
16 THE COURT: OH, THAT ONE. STRONGER AVAILABLE
17 EVIDENCE.

18 MS. WILKINSON: YES. AND OUR POINT IS, THERE WAS
19 EVIDENCE OUT THERE THAT THESE WITNESSES SHOULD HAVE
20 CONSIDERED. IT WAS WITHIN THE CUSTODY OF THE PLAINTIFF, AND
21 THEY FAILED TO PRODUCE IT. WHETHER THEY WOULD HAVE COME TO A
22 DIFFERENT CONCLUSION, NOBODY KNOWS, BECAUSE THEY WEREN'T
23 PERMITTED TO SEE IT.

24 BUT WE'RE ALLOWED TO ARGUE THAT HE HAD IT AND
25 HE FAILED TO PRODUCE IT.

26 THE COURT: MR. PIUZE, I THINK WHAT SHE IS CLAIMING
27 IS THAT THE -- ARGUING IS, IN ESSENCE, THAT THE -- THOSE
28 HYPOTHETICAL QUESTIONS AND THE EXPERT OPINION AND THE

9659
1 EVIDENCE ON WHICH IT'S BASED.

2 MS. WILKINSON: YOU ARE RIGHT, YOUR HONOR. THERE'S A
3 HYPOTHETICAL.

4 THE COURT: I'M JUST LOOKING FOR THE EXACT WORDING
5 WITH IT. BEAR WITH ME FOR A SECOND.

6 MS. WILKINSON: IT'S 2.42, YOUR HONOR.

7 THE COURT: THANK YOU.

8 MR. PIUZE, YOUR OBJECTION IS NOTED AND
9 RESPECTFULLY OVERRULED.

10 TRUTHFULLY, MS. WILKINSON --

11 MS. WILKINSON: YES, YOUR HONOR.

12 THE COURT: -- I THINK, ALTHOUGH I'M GOING TO LET YOU
13 HAVE THAT, THIS DECLARATION, I THINK THAT YOU WOULD BE WELL
14 ADVISED TO CONSIDER WHERE YOU'RE GOING WITH THAT ARGUMENT.

15 MS. WILKINSON: THANK YOU.

16 THE COURT: OKAY. SO I'LL LET YOU HAVE IT. I'VE
17 ALREADY CONSIDERED IT. IT IS RELEVANT. AND UNDER 352,
18 I'LL -- I DID THE WEIGHING AND I'LL ALLOW IT. BUT --

19 MS. WILKINSON: I HEAR WHAT YOUR HONOR IS TRYING TO
20 TELL ME.

21 THE COURT: -- IT'S MORE LIKELY TO BITE YOU ON THE
22 BACKSIDE.

23 MR. PIUZE: DOES THAT HAVE AN EXHIBIT NUMBER NOW?

24 MS. WILKINSON: 405.

25 THE COURT: YES. IT'S 405. YES.

26 MR. PIUZE: OKAY. SO, IN RETALIATION, AS THEY SAY, I
27 OFFER 406 AND 407.

28 THE COURT: TELL ME WHAT 406 IS GOING TO BE.

9660
1 MR. PIUZE: 406 IS THE DECLARATION OF MICHAEL KOSS,
2 K-O-S-S, M.D.

3 407 IS THE DECLARATION OF PETER J. BARRETT,
4 B-A-R-R-E-T-T, M.D., BOTH FILED.

5
6 (I.D. 406 - KOSS DECLARATION)
7 (I.D. 407 - BARRETT DECLARATION)

8
9 MS. WILKINSON: I HAVE NO OBJECTION, YOUR HONOR, AS
10 LONG AS WE BLACK OUT THE SAME THINGS WE BLACKED OUT ON THESE,
11 THE AFFIDAVIT OF CHARLES AY. SO THAT WHAT'S IN OPPOSITION TO
12 AND DOWN AT THE BOTTOM.

13 THE COURT: IS THAT ALL RIGHT WITH YOU?

14 MR. PIUZE: LET'S SEE WHAT SHE BLOCKED OUT.

15 MS. WILKINSON: JUST RIGHT HERE, AFTER DECLARATION.

16 MR. PIUZE: ALL YOU'VE GOT TO DO IS SHOW ME. RELAX.
17 RELAX.

18 CAN WE GO OFF THE RECORD HERE FOR SECOND?
19 THE COURT: YES, YOU FOLKS CAN.

20
21 (SHORT PAUSE.)
22

23 MR. PIUZE: 405, -6 AND -7, WHICH ARE RESPECTFULLY
24 THE DECLARATIONS OF AY, KOSS AND BARRETT, ARE NOW ALL IN.
25 405 BEING PROFFERED BY THE DEFENSE; -6 AND -7 BY THE
26 PLAINTIFF.

27 THE COURT: YEAH. I'VE GOT IT.
28

9661
1 (EVID. - 405 THROUGH 407)
2

3 MR. PIUZE: THE AMOUNT, MS. WILKINSON?

4 MS. WILKINSON: YES.

5 MR. PIUZE: IS \$309,849.46.

6 MS. WILKINSON: I'M SORRY.

7 THE COURT: SAY THAT AGAIN. 309,000?

8 MR. PIUZE: 849.46. REASONABLE AND NECESSARY.

9 THE COURT: 339 OR 309?

10 MR. PIUZE: 309,849.46.

11 MS. WILKINSON: SO COULD WE AGREE ON A STIPULATION,
12 MR. PIUZE, THAT SAYS THE PLAINTIFF AND DEFENDANT AGREE THAT
13 MR. RELLER'S REASONABLE AND NECESSARY MEDICAL COSTS TOTAL
14 \$309,849.46?

15 MR. PIUZE: YES.

16 MS. WILKINSON: YOUR HONOR, DO YOU WANT TO READ THAT,
17 SINCE IT'S BOTH OF US?

18 THE COURT: YES. IF YOU WANT TO GIVE IT TO ME TO
19 READ IT, I'LL DO IT.

20 MS. WILKINSON: THANK YOU. SORRY FOR THE HAND
21 SCRATCH.

22 THE COURT: NO PROBLEM.

23 MR. PIUZE: AND HERE'S THE SECOND STIPULATION WE'D
24 LIKE YOU TO READ.

25 JUST WHAT'S IN THE BOX.

26 THE COURT: IN 1887, PHILIP MORRIS -- I'M JUST TRYING
27 TO MAKE SURE THIS IS IT. THAT'S IT.

28 MS. WILKINSON: MR. PIUZE WANTS THAT IN.

9662
1 THE COURT: FINE. I JUST WANT TO MAKE SURE I
2 UNDERSTOOD WHAT I WAS SUPPOSED TO READ.

3 MR. PIUZE: I GUESS I CAN FLIP A COIN AND CHANGE YOUR
4 MIND BETWEEN NOW AND NEXT WEEK, IF YOU WANT.

5 MS. WILKINSON: YOU MEAN ABOUT ALL THREE OF THEM?

6 MR. PIUZE: SURE. OR NOT. IT'S SIX OF ONE, HALF A
7 DOZEN OF ANOTHER ALL THE WAY UP AND DOWN.

8 MS. WILKINSON: GIVE US A MINUTE.

9 MR. PIUZE: TAKE THE WEEKEND. IT DOES NOT MATTER.

10 MS. WILKINSON: YOU WON'T PUT THEM IN RIGHT NOW?

11 MR. PIUZE: WE CAN WITHDRAW THEM. I THOUGHT WE JUST
12 AGREED WE'RE NOT GOING TO READ THEM RIGHT NOW.

13 MS. WILKINSON: I'LL READ -- I CAN'T --

14 MR. PIUZE: YOU CAN CONSULT KANSAS CITY.

15 MS. WILKINSON: I WANT TO CONSULT MR. GARDNER.

16
17 (DISCUSSION HELD OFF THE RECORD.)
18

19 MS. WILKINSON: ALL RIGHT, YOUR HONOR. WE'RE READY
20 IF WE'RE NOT GOING TO --

21
22 (THE FOLLOWING PROCEEDINGS WERE HELD
23 IN OPEN COURT IN THE PRESENCE
24 OF THE JURY:)
25
26 THE COURT: IN THE MATTER OF RELLER VERSUS
27 PHILIP MORRIS, BC 261796.
28 THE RECORD SHOULD REFLECT THAT ALL 12 JURORS,
9663
1 FOUR ALTERNATES ARE PRESENT.
2 ALL COUNSEL PREVIOUSLY STATED ARE PRESENT.
3 DR. LEWIS IS PRESENT.
4 SORRY, FOLKS. IT TOOK A LITTLE LONGER THAN WE
5 THOUGHT, BUT WE ARE READY TO GIVE YOU TWO STIPULATIONS AND
6 INTRODUCE SOME EVIDENCE ON THE RECORD.
7 AND THEN, IF I'M NOT MISTAKEN, MR. PIUZE, THERE
8 IS NO FURTHER REBUTTAL OR ANYTHING FROM YOU, RIGHT?
9 MR. PIUZE: THIS ISN'T REBUTTAL. THIS IS --
10 THE COURT: I UNDERSTAND.
11 MR. PIUZE: -- FROM THE MAIN CASE.
12 THE COURT: THERE'S NOTHING ELSE FROM YOU?
13 MR. PIUZE: YES.
14 THE COURT: AND OKAY. FINE.
15 WILL THERE BE ANY -- NOT THAT THIS WAS REBUTTAL
16 OR SURREBUTTAL OR ANYTHING ELSE?
17 MS. WILKINSON: NO, JUDGE, WE'RE DONE.
18 THE COURT: OKAY. SO WHAT THIS MEANS, FOLKS, AFTER
19 WE'RE DONE WITH TODAY, WE'RE DONE WITH THE TESTIMONY PHASE
20 AND THE EVIDENTIARY PHASE OF THE TRIAL.
21 YOU'RE NOT GOING TO COME TOMORROW BECAUSE
22 COUNSEL AND I ARE GOING TO WORK MORE ON JURY INSTRUCTIONS.
23 IF YOU NOTICED MY GRUMPINESS EARLIER AND THE
24 FACT THAT THERE WAS SOMEBODY THAT KEPT COMING OVER TO
25 SIDEBAR, MY COMPUTER PROGRAM THAT'S SUPPOSED TO HAVE BASIC
26 INSTRUCTIONS IN IT WAS DYSFUNCTIONAL, AT BEST. NOT ONLY
27 THAT, IT WASN'T UP TO DATE. APPARENTLY, THEY HADN'T GOTTEN
28 AROUND TO ME TO PUT IN THE CURRENT INSTRUCTIONS IN THAT THEY
9664
1 PROBABLY DID WITH THE OTHER FOLKS, BUT I DON'T COUNT.
2 BUT, ANYWAY, THERE WAS A WILD FLURRY OF
3 E-MAILING BETWEEN MYSELF AND OTHERS. NEEDLESS TO SAY, THEY
4 CAME IN AND FIXED IT. IT TOOK THEM MUCH LONGER THAN THEY
5 THOUGHT IT WAS GOING TO. BUT, ANYWAY, IT'S NOW BEEN FIXED
6 AND UP TO DATE. BUT BECAUSE OF THAT, WE WERE NOT ABLE TO DO
7 AS MUCH AS WE THOUGHT WE WERE GOING TO BE ABLE TO DO
8 YESTERDAY AND ALSO THIS MORNING WHEN YOU WEREN'T IN HERE.
9 SO TOMORROW IS YOUR DAY OFF. STARTING ON
10 TUESDAY, WE WILL HAVE INSTRUCTIONS AND ARGUMENT BY COUNSEL,
11 AND THEN THE CASE WILL BE TO THE JURY.
12 NOW, LET'S SEE. IT WAS THE 29TH, RIGHT?
13 JUROR HAMENT: I'M SORRY. YES. THANK YOU. YES.
14 THE COURT: IT WAS THE MORNING OF THE 29TH?
15 JUROR HAMENT: YES.
16 THE COURT: AT THE VERY LEAST, FOLKS, IN CASE WE ARE
17 STILL HERE, WE WILL HAVE THE MORNING OF JULY 29TH OFF.
18 AND I KNOW OTHERS OF YOU HAVE WRITTEN ME OTHER
19 NOTES. I WILL DEAL WITH THAT AS IT COMES UP FOR THOSE WHO
20 WROTE ME OTHER NOTES. DON'T NEED TO PANIC.
21 DON'T PANIC. WHOEVER WROTE ME THE OTHER NOTE,
22 DON'T -- DON'T PANIC. OKAY.
23 OKAY. TWO STIPULATIONS. THE STIPULATION IS AN
24 AGREEMENT BY BOTH ATTORNEYS. YOU ARE TO TAKE WHAT I'M GOING
25 TO TELL YOU NOW FOLLOWING A STIPULATION AS FACTS.

26 DO YOU ALL UNDERSTAND THAT?

27

28 (CHORUS OF AFFIRMATIVE RESPONSE.)

9665

1 THE COURT: EVERYONE'S SAYING YES. OKAY.

2 FIRST STIPULATION. IN 1847, PHILIP MORRIS,
3 ESQUIRE, TOBACCONIST AND IMPORTER OF FINE CIGARS, OPENED A
4 SHOP ON BOND STREET IN LONDON.

5 THE SECOND STIPULATION IS THE FOLLOWING: THE
6 PLAINTIFF AND DEFENDANT AGREE THAT MR. RELLER'S REASONABLE
7 AND NECESSARY MEDICAL COSTS TOTAL -- YOU MAY WANT TO TAKE
8 THIS DOWN, BECAUSE YOU'RE NOT GOING TO BE HEARING IT
9 AGAIN -- THIS IS NOT MEANT THAT I'M PUTTING ANY EMPHASIS ON
10 ANYTHING. I JUST WANT YOU TO KNOW THE AMOUNT IN CASE YOU
11 NEED IT LATER ON -- TOTAL \$309,849.46.

12 IF SOMEONE NEEDS IT REPEATED -- I CAN SEE BY A
13 LOOK.

14 \$309,849.46.

15 I WANT TO MAKE SOMETHING CLEAR.

16 THE REASON I ASKED YOU TO WRITE IT DOWN IS SO
17 YOU WOULDN'T BE BUGGING THE COURT REPORTER LATER ON FOR THE
18 AMOUNT, IF YOU NEEDED IT. SIMPLY BECAUSE I DID THAT DOES NOT
19 MEAN I'M PUTTING ANY EMPHASIS ON ANYTHING. I HAVE ABSOLUTELY
20 NO OPINION AS TO WHAT YOU SHOULD DO. THIS IS GOING TO BE
21 YOUR -- UP TO YOU. IT'S GOING TO BE FOR YOU FOLKS TO ACT AS
22 A JUDGE OF THE FACTS. IT'S GOING TO BE UP TO YOU TO MAKE THE
23 DECISION.

24 I JUST WANT TO MAKE SURE YOU HAD IT DOWN
25 BECAUSE I SAW NO ONE HAD THEIR PENS OUT OR THEIR BOOKS OUT OR
26 ANYTHING ELSE. OKAY.

27 YOU ALL UNDERSTAND, I'M NOT TRYING TO LEAN ONE
28 WAY OR OTHER. REMEMBER, I TOLD YOU IN THE BEGINNING I WAS AN

9666

1 EQUAL OPPORTUNITY GRUMP, BUT -- WELL, I'VE CERTAINLY PROVED
2 THAT. BOTH SIDES HAVE BEEN GRUMPED ON, AND BOTH SIDES HAVE
3 BEEN HELPED, AS YOU'VE ALL SEEN.

4 SO WHAT WE'RE GOING TO DO RIGHT NOW IS, COUNSEL
5 ARE GOING TO PUT IN SOME DOCUMENTS AND HAVE THEM MARKED
6 FORMALLY IN EVIDENCE.

7 MR. PIUZE.

8 MR. PIUZE: OKAY. YOUR HONOR, THE FIRST ONE THAT I'D
9 LIKE TO DISPLAY AND PUT IN IS 399. AND THE DATE IS FROM
10 "BROADCASTING" MAGAZINE, APRIL 23, 1979. AND I'M JUST GOING
11 TO, BECAUSE IT'S SHORT I'LL READ THE WHOLE THING.

12 (READING:)

13

14 NO JUDGE --

15

16 MR. PIUZE: I'LL JUST READ THE YELLOW (READING):

17

18 SO IF YOU'VE GOT AN AUDIENCE
19 WHO'D BE INTERESTED IN SOME OF THE
20 FACTS THE GOVERNMENT IGNORED WHEN IT
21 EMBARKED ON ITS CURRENT ANTI-SMOKING
22 CAMPAIGN, I'D LIKE TO SET THE RECORD
23 STRAIGHT AND ANSWER THEIR QUESTIONS,
24 NOT BECAUSE I WANT TO MAKE NEW
25 CONVERTS OR KEEP ANYBODY FROM
26 QUITTING. I DON'T. BUT BECAUSE I
27 THINK THE AMERICAN PUBLIC HAS THE
28 RIGHT TO THE WHOLE TRUTH.

9667

1 397 IS FROM PHILIP MORRIS' 1983 ANNUAL REPORT.

(READING:)

PHILIP MORRIS CONTINUES TO CHALLENGE THE ASSERTION THAT THERE IS CONCLUSIVE PROOF OF CAUSE AND EFFECT RELATIONSHIP BETWEEN CIGARETTE SMOKING AND CHRONIC DISEASES. WE REMIND OUR SHAREHOLDERS THAT: NO ONE KNOWS WHAT CAUSES CANCER OR OTHER CHRONIC DISEASES CLAIMED TO BE RELATED TO SMOKING.

NUMEROUS FACTORS, INCLUDING OCCUPATIONAL ENVIRONMENTS, INDUSTRIAL POLLUTION, TOXIC WASTE, HEREDITY AND STRESS SEEM TO AFFECT THE FREQUENCY OF OCCURRENCE OF THESE COMPLEX DISEASES, ACCORDING TO SCIENTIFIC STUDIES.

403, FEBRUARY.

THE COURT: 403. NO.

MR. PIUZE: SORRY.

402, FEBRUARY 11, 2000 MEMO -- E-MAIL, PHILIP MORRIS E-MAIL (READING):

SINCE THE DISSOLUTION OF CIAR AND CTR, PHILIP MORRIS HAS DECIDED TO FUND THEIR OWN EXTERNAL

RESEARCH PROGRAM, FUNDED SOLELY BY US. I KNOW THAT THERE SEEMS TO BE A LOT OF CONFUSION, AND HOPEFULLY, I WILL BE ABLE TO CLARIFY SOME THINGS.

AND, YOUR HONOR, THAT'S ALL I WANTED TO DISPLAY.

NO. 404 WOULD ALSO BE REQUESTED TO BE PUT IN EVIDENCE NOW.

THE COURT: I ASSUME -- WELL, ARE YOU GOING TO DISPLAY THAT NOW?

MR. PIUZE: PHILIP MORRIS WANTS TO PUT IT IN EVIDENCE.

MS. WILKINSON: YES. WE JUST WANTED TO PUT IN 404, YOUR HONOR, WHICH IS A SHOT OF THE 1999 WEBSITE.

THE COURT: OKAY.

MS. WILKINSON: WHICH IS MARKED UP AT THE TOP THERE, 404, AND IT'S DATED DOWN HERE, BY AGREEMENT OF THE PARTIES, 10 -- IS THAT A 19, MR. PIUZE?

MR. PIUZE: 13.

MS. WILKINSON: -- 10-13-99, APPEARING ON PHILIP MORRIS WEBSITE TALKING ABOUT (READING):

THERE IS AN OVERWHELMING MEDICAL AND SCIENTIFIC CONSENSUS THAT CIGARETTE SMOKING CAUSES LUNG CANCER, HEART DISEASE, EMPHYSEMA AND OTHER SERIOUS DISEASES IN SMOKERS.

THE COURT: OKAY. ANYTHING ELSE, FOLKS, BEFORE THE JURY GOES HOME FOR THE WEEKEND?

MS. WILKINSON: THAT'S ALL, YOUR HONOR.

THE COURT: OKAY. A COUPLE OF THINGS AGAIN, I WANT TO REMIND YOU.

I HAVE TO REMIND MYSELF TO NOT LET MR. PIUZE'S

7 CLOCK TICK ANYMORE, TOO.
8 AGAIN, I'M GOING TO TELL YOU INFORMALLY AND IN
9 THE INSTRUCTIONS:
10 DO NOT ASSUME THAT I'M LEANING ONE WAY OR
11 ANOTHER. IF I'VE ASKED QUESTIONS OR IF I'VE PUT THE BRAKES
12 ON WITNESSES, PUT THE BRAKES ON THE ATTORNEYS, AS IT IS WERE,
13 ANYTHING I'VE DONE HAS BEEN IN MY ROLE AS THE REFEREE AT A
14 BASKETBALL GAME; IN OTHER WORDS, AS JUDGE OF THE LAW, BUT I'M
15 NOT TRYING TO SEND YOU ANY SIGNALS.
16 I KNOW THAT I BLINK MY EYES FUNNY SOMETIMES.
17 I'VE GOT CONTACTS IN THAT ARE DRIVING ME NUTS, AS YOU FOLKS
18 KNOW WHEN ONE INADVERTENTLY POPPED OUT AND I COULDN'T FIND IT
19 THE OTHER DAY.
20 BUT I'M NOT TRYING TO SEND YOU ANY MESSAGES,
21 AND PLEASE DO NOT INTERPRET ANYTHING THAT I'VE DONE, ANYTHING
22 THAT I'VE SAID, ANY ACTIONS I'VE MADE. IF MY SKIN COLOR HAS
23 CHANGED COLORS, AS SOMETIMES IT WANTS TO DO, DON'T ASSUME
24 SOMETHING. DON'T ASSUME THAT BECAUSE I HAVE A FUNNY LOOK ON
25 MY FACE I'M MAKING A RULING OR EVALUATING SOMETHING.
26 IF I HAVE USED HARSH WORDS TOWARDS EITHER SIDE,
27 DON'T ASSUME I'M TRYING TO SEND A MESSAGE AS TO WHICH SIDE
28 SHOULD WIN OR LOSE. I'M NOT.

9670

1 IF I'VE USED A HARSHER TONE OF VOICE TO ONE
2 SIDE OR THE OTHER AT VARIOUS TIMES, DON'T ASSUME I'M SENDING
3 ANY MESSAGES TO YOU. THE MESSAGES I AM SENDING ARE TO THE
4 ATTORNEYS, NOT TO YOU FOLKS.

5 DO YOU ALL UNDERSTAND THAT?

6
7 (CHORUS OF AFFIRMATIVE RESPONSE.)
8

9 THE COURT: EVERYBODY SAID YES. OKAY.

10 LADIES AND GENTLEMEN OF THE JURY, YOU ARE
11 ADMONISHED THAT IT IS YOUR DUTY NOT TO CONVERSE AMONG
12 YOURSELVES OR WITH ANYONE ELSE ON ANY SUBJECT CONNECTED WITH
13 THIS TRIAL OR TO FORM OR EXPRESS ANY OPINION THEREON UNTIL
14 THE CAUSE IS FINALLY SUBMITTED TO YOU.

15 YOU ARE ORDERED TO RETURN THIS COMING TUESDAY,
16 JULY 22ND. THAT'S TUESDAY, JULY 22ND, AT 8:30 A.M.
17 8:30 A.M.

18 HAVE A GREAT WEEKEND.

19 AND, MS. MOYA, I HOPE YOUR CHILD IS --
20 CONTINUES DOING WELL.

21 JUROR MOYA: THANK YOU.

22
23 (THE FOLLOWING PROCEEDINGS WERE HELD
24 IN OPEN COURT OUT OF THE PRESENCE
25 OF THE JURY:)
26

27 THE COURT: I'LL SEE YOU FOLKS BACK HERE AFTER A
28 15-MINUTE BREAK. 2:15.

9671

1 MR. PIUZE: THERE'S AT LEAST ONE AND MAYBE TWO
2 BLOW-UPS THAT HAVE PREVIOUSLY BEEN MARKED BUT HAVEN'T BEEN
3 MOVED INTO EVIDENCE.

4 THE COURT: WE'LL GET THEM.

5 MR. PIUZE: YEAH.

6 THE COURT: JUST REMIND ME THAT YOU HAVE THEM. OKAY.

7 WHAT I WANT TO DO IS START GOING THROUGH JURY
8 INSTRUCTIONS. THERE'S SOMETHING BEFORE I FORGET, I WANT YOU
9 TO CONSIDER. THAT IS THE ALTERNATES. THERE ARE A COUPLE OF
10 WAYS OF HANDLING ALTERNATES. ONE IS HAVING THEM SIT WHEREVER
11 THEY CAN IN THE BUILDING IN HERE AND TWIDDLE THEIR THUMBS AND

12 WAIT.
13 THE OTHER THING THAT WE CAN DO IS TELL
14 THEM -- AND I'VE DONE THIS A LOT IN RECENT YEARS, AND IT
15 WORKS VERY SUCCESSFULLY -- THAT THEY MUST BE A POTTED PALM OR
16 A POTTED PLANT. THEY CANNOT -- THEY CAN SIT IN, LISTEN TO
17 THE DELIBERATIONS, BUT THEY CANNOT PARTICIPATE IN ANY WAY.
18 IF AN ALTERNATE IS SUBSTITUTED, THEY GET THE INSTRUCTION TO
19 START DELIBERATING ALL OVER AGAIN.
20 THE REASON THAT THIS HELPS IS BECAUSE THE
21 ALTERNATES FEEL MORE LIKE THEY'RE PART OF THINGS AND THEY GET
22 A CHANCE TO SEE HOW THE SYSTEM WORKS.
23 DO NOT ANSWER ME RIGHT NOW. ALTHOUGH I
24 ENCOURAGE IT STRONGLY, BECAUSE I REALIZE THAT YOU FOLKS NEED
25 TO GET IT CHECKED OUT.
26 I'LL SEE YOU AT 2:15.
27
28 (RECESS.)

9672

1 THE COURT: IN THE MATTER OF RELLER VERSUS PHILIP
2 MORRIS, BC 261796.
3 THE RECORD SHOULD REFLECT WE'RE OUTSIDE THE
4 PRESENCE OF THE JURY.
5 ALL COUNSEL -- WELL, YEAH, ALL COUNSEL
6 PREVIOUSLY STATED AT THE LAST BREAK ARE PRESENT.
7 I KIND OF WOULD LIKE TO GO OVER THE LAST LITTLE
8 BITS OF EVIDENCE THAT HAVEN'T BEEN DEALT WITH.
9 OKAY. FIRST IS 393 AND 394. THAT'S WAKEHAM'S
10 AND BOWLING'S INTERVIEWS.
11 DID YOU GET A CHANCE TO LOOK AT THEM?
12 MS. WILKINSON: YES. AND THEY'RE CONSISTENT WITH
13 WHAT WAS SHOWN IN THE COURTROOM.
14 THE COURT: SUBJECT TO YOUR PRIOR OBJECTIONS, YOU
15 DON'T HAVE ANY OTHER ISSUES, RIGHT?
16 MS. WILKINSON: CORRECT.
17 THE COURT: ALL RIGHT. 393 AND 394 ARE IN EVIDENCE.
18
19 (EVID. - 393 AND 394)
20

21 THE COURT: 399, OVER YOUR OBJECTIONS, IS IN
22 EVIDENCE. THE PART -- IS THE WHOLE THING COMING IN EVIDENCE
23 OR JUST THE PART THAT YOU READ?
24 MR. PIUZE: I DON'T KNOW WHAT IT IS.
25 THE COURT: I'M SORRY. THERE WAS, IT WAS THE TOBACCO
26 INCIDENT ADVERTISEMENT, OR WHATEVER, IN APRIL.
27 MR. PIUZE: THE WHOLE THING COMES IN.
28 MS. WILKINSON: YES. WE AGREE, THERE'S TWO PAGES TO

9673

1 IT, JUDGE.
2 THE COURT: OKAY.
3 399 IS IN EVIDENCE.
4
5 (EVID. - 399)
6
7 COURT: 400 ARE THE MATERIALS REVIEWED BY
8 DR. SREENIVASAN.
9 ANY OBJECTION, MR. PIUZE?
10 THE CHART?
11 MR. PIUZE: NO.
12 THE COURT: I LOOKED AT THIS, I LOOKED AT THAT.
13 MR. PIUZE: NO.
14 THE COURT: OKAY. FINE. 400 IS IN.
15
16 (EVID. - 400)

17
18 THE COURT: 401, THE RELLER TIME LINE.
19 ANY OBJECTION TO THAT ONE?
20 MR. PIUZE: RIGHT NOW, THERE'S A COMMENT QUERY. MY
21 TIME LINE IS STILL DANGLING.
22 THE COURT: THERE WAS SOME ISSUES ON YOUR TIME LINE
23 ABOUT -- WASN'T THERE SOMETHING ABOUT LENGTH?
24 MS. WILKINSON: THE TITLE, CREATING DOUBT. IT WAS
25 MORE ARGUMENTATIVE. THAT WAS OUR POSITION.
26 MR. PIUZE: THERE WERE TWO ISSUES ON MY TIME LINE.
27 ONE WAS THE CAPTION, AND THE SECOND WAS THAT THERE WERE TWO
28 PIECES OF EVIDENCE WHICH, AT THAT TIME, WEREN'T IN, BOTH OF
9674
1 WHICH ARE NOW IN.
2 THE COURT: OKAY. MR. PIUZE, I'M NOT PUTTING
3 ONE -- SAYING EITHER ONE IS COMING IN OR NEITHER ARE COMING
4 IN OR THEY'RE BOTH COMING IN. OKAY.
5 I'M HANDLING THIS TIME LINE NOW. AND THEN I'M
6 GOING BACK AND LOOK AT YOURS, BECAUSE I DO REMEMBER THERE WAS
7 SOMETHING ABOUT EVIDENCE COMING IN. SO LET ME DO THIS ONE
8 RIGHT NOW.
9 ANY OBJECTION TO THIS ONE?
10 MR. PIUZE: WELL, SO FAR, JUST BECAUSE IT'S A
11 GRAPHIC, I'M GOING TO OBJECT TO IT NOW BECAUSE IT'S A
12 GRAPHIC. AND I STAND READY TO -- IT'S NOT REALLY EVIDENCE.
13 IT'S NOT REALLY EVIDENCE. IT'S A GRAPHIC. IT'S OBVIOUS, I'M
14 NOT TRYING TO BE TRANSPARENT OR ANYTHING. I'M READY TO
15 WITHDRAW MY OBJECTION WHEN MINE IS TREATED SIMILARLY, MY TIME
16 LINE.
17 THE COURT: MR. PIUZE, THE PROBLEMS THAT I HAD WITH
18 YOUR TIME LINE BEFORE WASN'T THAT IT WAS A GRAPHIC, BUT WAS
19 THAT THERE WAS SOME EVIDENCE THAT HAD BEEN MARKED ON THERE
20 THAT WE HADN'T GOTTEN TO, AND IT -- WHAT IS THE WORD -- I
21 THINK THE WORD'S CASTING DOUBT. I DON'T REMEMBER WHAT ELSE
22 IT SAID AT THE TIME.
23 I'M LOOKING AT THIS THE SAME WAY I'M GOING TO
24 BE LOOKING AT YOURS. IS THERE EVIDENCE THAT SUPPORTS THE
25 INFORMATION ON IT?
26 MR. PIUZE : YEAH. THERE'S EVIDENCE THAT SUPPORTS
27 THE INFORMATION ON IT.
28 THE COURT: THANK YOU.
9675
1 OVER YOUR OBJECTION, I'M GOING TO ADMIT 401.
2 I'LL GET TO YOURS WHEN I'M DONE WITH THIS
3 LATEST SET OF THINGS. OKAY.
4 MR. PIUZE: SURE.
5
6 (EVID. - 401)
7
8 THE COURT: 402, THE E-MAIL FROM MC ALPIN.
9 I ASSUME THAT YOU ARE STILL OBJECTING, AND ARE
10 THERE ANY ADDITIONAL OBJECTIONS, MS. WILKINSON?
11 MS. WILKINSON: NO, YOUR HONOR.
12 THE COURT: OKAY. OVER DEFENDANTS' OBJECTIONS -- I
13 ASSUME YOU STILL WANT IT IN, 402?
14 MR. PIUZE: YES.
15 THE COURT: E-MAIL. THANK YOU. THAT'S COMING INTO
16 EVIDENCE.
17
18 (EVID. - 402)
19
20 THE COURT: OKAY. 403 IS NOT IN EVIDENCE.
21 404, THE PHILIP MORRIS WEBSITE, ANY OBJECTION,

22 MR. PIUZE?
23 MR. PIUZE: AGAIN, BEFORE I ANSWER THAT DIRECTLY, I
24 WAS CAUGHT OFF GUARD HERE. I THOUGHT, ULTIMATELY,
25 YOUR HONOR, YOU DID ALLOW THAT LETTER.
26 THE COURT: NO.
27 MR. PIUZE: I'M TOTALLY OUT TO LUNCH ON THAT, HUH?
28 THE COURT: YOU ARE.

9676
1 MR. PIUZE: SORRY. 404, NO OBJECTION.
2 THE COURT: AT LEAST YOU'RE WRONG ON THAT. YOU'RE
3 NOT TOTALLY OUT TO LUNCH, BUT YOU'RE WRONG ON THAT ISSUE.
4 MR. PIUZE: YEAH. WELL, TOTALLY OUT TO LUNCH ON THAT
5 ISSUE. I THOUGHT YOU FOUND IN MY FAVOR.
6 THE COURT: I SAID NO, WROTE MY LITTLE WAY OF DEALING
7 WITH IT IN HERE ALREADY.
8 MR. PIUZE: NO PROBLEM.
9 THE COURT: 404 IS RECEIVED INTO EVIDENCE.

10
11 (EVID. - 404)
12
13 THE COURT: WE ALREADY HAVE 405 THROUGH 407 IN
14 EVIDENCE.
15 I'M GOING BACK OVER IT FROM THE GET-GO. WE
16 HAVE SOME BOOKS AND SOME THINGS LIKE THAT.
17 THE FIRST THING I HAVE IS NO. 18, WHICH IS A
18 SPECIAL REPORT.
19 MS. WILKINSON: JUDGE, I'M SORRY. DID YOU JUST SAY
20 405, 406 AND 407 ARE IN EVIDENCE?
21 THE COURT: ISN'T THAT WHAT YOU FOLKS WANTED?
22 MS. WILKINSON: ME AND MR. PIUZE ARE GOING TO HAVE
23 ANOTHER DISCUSSION ABOUT IT, BECAUSE THEY HURT BOTH OF US.
24 HE WAS KIND ENOUGH TO SAY I COULD REASK AND WE COULD TALK
25 ABOUT IT.
26 MR. PIUZE: THERE'S WOBBLERS.
27 MS. WILKINSON: WE'RE WOBLING.
28 THE COURT: RIGHT NOW, THEY'RE IN EVIDENCE.

9677
1 MS. WILKINSON: WE DIDN'T MOVE THEM IN IN FRONT OF
2 THE JURY, SO --
3 THE COURT: THEY'RE IN EVIDENCE FROM MY STANDPOINT.
4 IF YOU WANT TO -- IF YOU FOLKS WANT TO WITHDRAW THEM PER
5 STIPULATION, THAT IS FINE, TOO. I HAD ALREADY RULED ON THAT
6 EARLIER. OKAY.
7 MS. WILKINSON: THANK YOU, JUDGE.
8 THE COURT: I DON'T CARE WHAT YOU DO. IF YOU WANT TO
9 WITHDRAW ALL THESE THINGS, IT'S JUST FINE WITH ME, TOO.
10 OKAY. MR. SABALBURO HAS TO KEEP HIS EYE ON --
11 MR. PIUZE: I KNOW. I'M JUST --
12 THE COURT: NO. 18, GUYS. I HAVE DOWN HERE SPECIAL
13 REPORT NO. 248, MARKET POTENTIAL OF A HEALTHY CIGARETTE.
14 IS THAT WHAT I WROTE?
15 WE HAVEN'T COVERED THAT.
16 MR. PIUZE: I THOUGHT THIS WAS 18.
17 THE COURT: THAT'S WHAT I JUST SAID.
18 MR. PIUZE: 18. YES.
19 THE COURT: YOU WANT IT IN?
20 MR. PIUZE: YES.
21 THE COURT: DO YOU HAVE ANY OBJECTION?
22 MS. WILKINSON: I NEED TO LOOK AT IT, JUDGE.
23 MR. PIUZE: YOU'VE ALREADY SEEN THIS.
24 MS. WILKINSON: I JUST DON'T REMEMBER WHAT IT IS.
25 THE COURT: I MAY HAVE RULED ON MANY OF THESE THINGS,
26 MS. WILKINSON, BUT IT ISN'T IN EVIDENCE PER SE, IF THERE WERE

27 OBJECTIONS BEFORE.
28 MS. WILKINSON: I DON'T HAVE ANY OBJECTION,
9678
1 YOUR HONOR.
2 THE COURT: 18'S RECEIVED INTO EVIDENCE.
3
4 (EVID. - 18)
5
6 THE COURT: OKAY. I ALSO HAVE 12. THAT HAD BEEN
7 MARKED ON JULY 12TH. IT SAYS IT'S A TRANSCRIPT OF THE
8 "FACE THE NATION" INTERVIEW.
9 MS. WILKINSON: I DID OBJECT TO THAT.
10 MR. PIUZE GOT INTO ONE SECTION THAT HE HAS ON
11 HIS BOARD AND THAT'S FINE.
12 THE COURT: PAGE 4 IS WHAT I WROTE DOWN. PAGE 4 WAS
13 OKAY.
14 MS. WILKINSON: YOU'D SAY HE HAS TO LAY A FOUNDATION
15 FOR THE REST. HE HASN'T DONE IT, SO I OBJECT.
16 MR. PIUZE: I WANT ONLY THE BLOWUP. I DON'T WANT THE
17 PART ABOUT SMOKING CAUSES SMALLER BABIES, BECAUSE, OH, MY
18 GOD, IN 400 DEATHS A YEAR, THAT WOULD BE SO PREJUDICIAL.
19 THE COURT: 400 DEATHS A YEAR?
20 MS. WILKINSON: 400,000, YOU MEAN.
21 THE COURT: I HAD DOWN IN MY PERSONAL NOTES HERE THAT
22 PAGE 4 WAS OKAY.
23 MS. WILKINSON: YES.
24 THE COURT: IT WAS WHATEVER PART THAT WAS READ.
25 CAN YOU FOLKS EDIT SO THAT PAGE 4 --
26 MS. WILKINSON: IT'S ALREADY ON A BOARD AND IN,
27 YOUR HONOR. IT'S BEEN DONE. IT'S EXHIBIT 11. SO THAT
28 SHOULDN'T COME IN, THE ONE YOU'RE TALKING ABOUT, AND 11 IS IN
9679
1 WITH --
2 THE COURT: MR. PIUZE, IS IT OKAY IF WE SAY NO TO 12,
3 PAGE 4, BECAUSE 11, ACCORDING TO YOU FOLKS, IS THE TRANSCRIPT
4 THAT YOU WANTED IN?
5 IS THAT OKAY?
6 MR. PIUZE: 11 IS THE BOARD. THAT'S WHAT WE WANT.
7 THE COURT: FINE. THEN 12 IS NOT COMING IN. YOU
8 DON'T HAVE TO EDIT ANYTHING. ALL RIGHT. THANK YOU.
9 NEXT THING I HAVE UP IS A PHOTO OF DR. OSCHNER.
10 I CAN'T REMEMBER. DID ANYBODY EVER I.D. --
11 MR. PIUZE: NO.
12 MS. WILKINSON: AT SOME POINT, I THINK SOMEBODY DID.
13 WE WITHDREW IT.
14 MR. PIUZE: HE DIDN'T LOOK LIKE WHEN I KNEW HIM.
15 THE COURT: I REMEMBER THAT.
16 MS. WILKINSON: DR. SCHALLER DID IDENTIFY HIM
17 AND -- BUT WE DIDN'T SHOW THAT FILM, SO WE WITHDREW IT.
18 THE CLERK: WHAT NUMBER IS THAT, YOUR HONOR?
19 THE COURT: THAT'S 29.
20 YOU'RE GOING TO WITHDRAW IT, RATHER
21 THAN -- OKAY.
22 MS. WILKINSON: (NODDING IN THE AFFIRMATIVE.)
23 THE COURT: FINE. WITHDRAWN BY DEFENDANTS.
24
25 (WITHDRAWN 29)
26
27 THE COURT: NEXT ONE I HAVE UP FOR DISCUSSION ARE
28 NOS. 126 AND 127 AND 128. THESE ARE BLOW-UPS OF DIFFERENT
9680
1 PARTS OF THE FRANK STATEMENT.
2 YOU WANT THEM IN?

3 MR. PIUZE: YEAH. SURE.
4 THE COURT: ANY OBJECTION?
5 MS. WILKINSON: NO, YOUR HONOR.
6 THE COURT: 126, 127 AND 128 ARE RECEIVED INTO
7 EVIDENCE.
8
9 (EVID. - 126 THROUGH 128)
10
11 MS. WILKINSON: I MEAN, OTHER THAN THE PLAINTIFF
12 NEVER SAW THEM.
13 THE COURT: I KNOW.
14 MS. WILKINSON: THAT'S WHY I SAID NO OBJECTION.
15 THE COURT: WE ALL UNDERSTAND THAT.
16 OKAY. NEXT ONE THAT I HAVE, I THINK, IS YOURS,
17 IS THE 172, THE BLOWUP OF THE TIME LINE.
18 CAN I SEE THE TIME LINE AGAIN FROM SOMEBODY?
19 MR. PIUZE: YOUR HONOR, LET'S DO THIS TOMORROW
20 BECAUSE THE TWO AD THINGS AREN'T -- WELL, LET'S TAKE A LOOK
21 AT IT RIGHT NOW.
22 THE COURT: THE ONLY PROBLEM THAT I WOULD STILL
23 HAVE -- IT'S COVERED UP, BECAUSE I DON'T THINK IT'S AN ISSUE
24 ANYMORE, AND I DON'T CARE IF YOU CALL IT A TIME LINE -- IS
25 THE WORD CASTING DOUBT TIME LINE. APART FROM THAT, I DON'T
26 HAVE ANY PROBLEM WITH IT.
27 MS. WILKINSON: YOUR HONOR, THIS HAS A PICTURE OF
28 MR. BIBLE.
9681
1 THE COURT: AND?
2 MS. WILKINSON: I ASSUME IT'S HIM, BUT IT CAN'T COME
3 IN. I MEAN, I'M NOT QUITE SURE. AND ALL THESE ADS THAT WERE
4 PUT ON. MR. PIUZE JUST PUT THESE ON THERE HIMSELF RANDOMLY.
5 MR. PIUZE: WAIT A SECOND. WHY DON'T YOU OPEN THAT
6 THING UP SO WE CAN SEE THE WHOLE THING.
7 THE COURT: AND DON'T BEAT POOR MS. SIMMONS IN THE
8 HEAD WITH IT.
9 MS. WILKINSON: AS YOU CAN SEE THERE, ALL THESE
10 LITTLE CIGARETTE ADS IN MINIATURE THAT MR. PIUZE WAS PUTTING
11 ALL OVER DURING DR. POLLAY'S TESTIMONY, BUT THEY -- THEY
12 WEREN'T BASED ON HIM SAYING THIS IS WHEN THEY WERE SHOWN OR
13 WHEN --
14 THE COURT: YES. I THINK THEY WERE. HE WAS -- I
15 REMEMBER HE WAS PUTTING THEM ON AT THE TIME THAT HE WAS
16 SHOWING THE ADS.
17 MR. PIUZE: MR. --
18 MS. WILKINSON: MOST RESPECTFULLY, YOUR HONOR, HE DID
19 ASK HIM ABOUT THESE PICTURES EARLIER, BUT MR. PIUZE WAS
20 PUTTING THEM ON. DR. POLLAY WASN'T TALKING ABOUT THE ADS.
21 HE WAS ASKING HIS BIG HYPOTHETICAL AND MR. PIUZE WAS WALKING
22 ALONG AND STICKING THEM ON. IT WASN'T WHILE HE WAS ASKING
23 HIM THE QUESTION.
24 MR. PIUZE: MR. RELLER IDENTIFIED THOSE ADS IN HIS
25 DEPOSITION, INCLUDING THE YEARS HE HELD THEM UP FOR THE
26 CAMERA. EVERY ONE OF THOSE ADS, I BELIEVE, EVERY SINGLE ONE
27 OF THOSE ADS WAS IDENTIFIED BY MR. RELLER WHO PUT A DATE ON
28 THEM. THE JURY HAS SEEN ALL OF THAT WITH THEIR OWN TWO EYES.
9682
1 MS. WILKINSON: AND WHAT'S UNDER HERE?
2 MR. PIUZE: IT'S NOT WHAT'S UNDER THERE. IT'S WHAT'S
3 GOING TO GO ON THERE. THAT'S CAMPBELL. THE REASON WE HAVE
4 GOT IT AS DETACHABLE IS SO THAT I CAN SAY TO THE JURY, THIS
5 IS FOR RELIANCE ONLY, NOT FOR LIABILITY. IT'S THE TWO
6 STATEMENTS THE COURT ALLOWED CAMPBELL TO SAY.
7 MS. WILKINSON: I THINK IT IS AN ARGUMENT CHART. I

8 DON'T THINK THAT IT'S IN EVIDENCE. IF THERE'S A PIECE THAT'S
9 GOING TO COME IN, THIS PART THAT'S COVERED THAT YOU ORDERED
10 COVERED DURING THE EXAMINATION, I THINK IT'S FAIR GAME FOR
11 ARGUMENT. I UNDERSTAND MR. PIUZE WILL USE IT VERY
12 EFFECTIVELY AGAINST US IN ARGUMENT, BUT I DON'T IT'S
13 EVIDENCE.

14 THE COURT: MR. PIUZE.

15 MS. WILKINSON: AND IT HAS THESE -- YOUR HONOR, IT
16 HAS ATTEMPTS TO QUIT. I MEAN, THIS IS COMPILING EVIDENCE
17 FROM MANY DIFFERENT WITNESSES. THERE WAS NOTHING DR. POLLAY
18 SAID ABOUT ATTEMPTS TO QUIT.

19 I MEAN, AGAIN, I SEE WHY IT'S ARGUMENT. IT'S
20 GOOD ARGUMENT. IT'S AN ATTRACTIVE CHART. I JUST DON'T THINK
21 IT'S EVIDENCE.

22 MR. PIUZE: I DON'T HEAR A VALID OBJECTION IN THERE
23 YET.

24 MS. WILKINSON: ARGUMENTATIVE. IT'S NOT, AS YOU WERE
25 SAYING, EVIDENCE. IT'S NOT BASED ON THAT WITNESS' TESTIMONY,
26 ALL THESE THINGS.

27 MR. PIUZE: YOUR HONOR, EVERY SINGLE THING ON THERE
28 IS BASED UPON TESTIMONY THAT'S IN FRONT OF THE JURY.

9683

1 MS. WILKINSON: THAT'S DIFFERENT.

2 MR. PIUZE: EVERY SINGLE WORD.

3 THE COURT: MR. PIUZE. MR. PIUZE.

4 MS. WILKINSON.

5 MS. WILKINSON: YES, YOUR HONOR.

6 THE COURT: I DON'T GENERALLY HAVE A PROBLEM WITH IT,
7 AS LONG AS IT REPRESENTS CORRECTLY THE EVIDENCE THAT'S BEFORE
8 THE JURY, AS LONG AS THAT CASTING DOUBT IS FOREVER OFF OF
9 THERE AND CAN'T BE LOOKED UNDER.

10 BUT, MR. PIUZE, WHATEVER YOU WANT TO STICK
11 ON -- I'M SORRY, MR. CAMPBELL, OR WHOMEVER IT WAS. HELP ME
12 WITH THE NAME.

13 DO I HAVE THE NAME RIGHT, CAMPBELL?

14 MR. PIUZE: CAMPBELL.

15 THE COURT: I'D LIKE IT ON BEFOREHAND.

16 MR. PIUZE, DO YOU -- YOU NEED TO THINK ABOUT
17 THIS. DO YOU REALLY WANT THE APPEAL GROUNDS THAT MAY COME
18 FROM THAT?

19 MR. PIUZE: FROM THAT?

20 THE COURT: FROM THAT.

21 MR. PIUZE: FROM THE WHOLE BOARD OR FROM HAVING
22 CAMPBELL ON THERE?

23 THE COURT: NO. FROM THE BOARD.

24 MR. PIUZE: YEAH. I CAN LIVE WITH THAT.

25 THE COURT: I'M GOING TO GET DOWN AND LOOK AT IT
26 CLOSER BECAUSE I CAN'T SEE IT ALL.

27 MR. PIUZE.

28 MR. PIUZE: YES.

9684

1 THE COURT: THIS IS VERY EFFECTIVE. I'D HAVE LESS
2 CONCERNS ABOUT IT IF I WERE -- IF IT WAS A BOARD THAT JUST
3 HAD, LIKE WHATEVER IT IS -- DR. DOLL WAS THE ONE THAT USED
4 THIS BOARD, RIGHT?

5 MR. PIUZE: NO.

6 THE COURT: WHO WAS IT?

7 WASN'T IT --

8 MR. PIUZE: NO. DR. -- DR. DOLL'S --

9 THE COURT: DID THE FIRST PART OF IT?

10 MR. PIUZE: YEAH.

11 MR. PIUZE: NO. DR. DOLL NEVER SAW THIS. THERE IS A
12 BOARD --

13 THE COURT: THERE'S SOMETHING LIKE THIS THAT LOOKS
14 LIKE THIS. COME ON, HELP ME OUT HERE.
15 MR. PIUZE: YES, PLEASE.
16 MR. GARDNER: I KNOW WHAT WE'RE AFTER.
17 THE COURT: BECAUSE I THOUGHT THE UPPER PART WAS WHAT
18 DOCTOR -- I SEE IT ISN'T --
19 MR. GOLDSTEIN: IT'S ANOTHER BOARD ENTIRELY.
20 MS. WILKINSON: THAT, YOUR, HONOR, IS MY CONCERN.
21 THE COURT: QUIET. I DON'T NEED ANYTHING. OKAY. I
22 GOT THE PICTURE.
23 THIS ISN'T WHAT DR. DOLL HAD USED?
24 MR. PIUZE: NO.
25 THE COURT: BECAUSE I THOUGHT IT --
26 MR. PIUZE: NO.
27 THE COURT: I'M JUST TRYING TO MAKE SURE.
28 MR. PIUZE: NO.

9685

1 THE COURT: OKAY. MR. PIUZE, THE PROBLEM I HAVE IS
2 THAT IT IS A MONTAGE OF MANY DIFFERENT POTENTIAL EXHIBITS. I
3 WOULDN'T HAVE -- I DON'T HAVE A PROBLEM, AND I THOUGHT THIS
4 WAS DR. DOLL'S. THAT WAS MY ISSUE FOR ME BEFORE, WHEN I WAS
5 OVER THERE, WHEN I WAS SITTING BACK OVER THERE.
6 MR. PIUZE: I GUESS YOU DO NEED CONTACT LENSES.
7 THE COURT: AND I'M AGREEING, I DO.
8 MR. PIUZE: DID I SAY THAT?
9 THE COURT: YES.
10 MR. PIUZE: ON THE RECORD?
11 THE COURT: YES. IT'S OKAY, MR. PIUZE. YOU'RE
12 RIGHT, I DO. THE PROBLEM IS THESE BIFOCALS, AND I CAN KIND
13 OF SEE CLOSE-UP, AND I CAN KIND OF SEE FAR AWAY, BUT NEITHER
14 VERY WELL.
15 MR. PIUZE: THESE THINGS AREN'T POTENTIAL EVIDENCE,
16 YOUR HONOR. GOING FROM LEFT TO RIGHT, THAT --
17 THE COURT: I KNOW WHAT IT IS. CAN I PLEASE --
18 MR. PIUZE: YES.
19 THE COURT: I KNOW WHAT IT IS. I UNDERSTAND WHAT IT
20 IS.
21 ARE WE EVER GOING TO SEE THE OTHER THING?
22 MR. GOLDSTEIN: MR. GARDNER -- IT WAS OUT HERE.
23 MR. PIUZE: IT WAS OUT HERE. IT WAS OUT HERE AS OF
24 YESTERDAY.

25

26 (SHORT PAUSE.)

27

28 THE COURT: THAT'S WHAT I THOUGHT THAT WAS. OKAY.

9686

1 WHAT NUMBER IS THE ONE YOU HAVE YOUR HAND NOW,
2 MR. PIUZE?
3 MR. PIUZE: 30.
4 THE COURT: THANK YOU. I THOUGHT 30 WAS -- WHAT'S
5 THIS EXHIBIT NUMBER?
6 MR. GOLDSTEIN: 172, I THINK, YOUR HONOR.
7 THE COURT: THAT'S MY CONFUSION.
8 MR. PIUZE: 30 -- ALL OF 30 IS SUBSUMED WITHIN THE
9 FIRST -- ALL WE DID WAS TAKE THE 1950 THING, JUST TO START
10 OFF THE TIME LINE, AND JUST TOOK THE ONE THING OFF OF IT.
11 THE COURT: THANK YOU. I WAS CONFUSED BEFORE.
12 172, YOU CAN USE IT TO YOUR HEART'S CONTENT FOR
13 ARGUMENT, BUT IT IS ARGUMENT. IT'S AKIN TO MS. WILKINSON'S
14 WRITING THINGS DOWN.
15 MS. WILKINSON: MY STOP SIGN CHART, YOU REMEMBER
16 THAT. YOU WOULDN'T LET ME USE IN OPENING.
17 THE COURT: I FORGOT ABOUT THAT.

18 AND IT'S LIKE WRITING STUFF DOWN LIKE THIS? ?
19 AND THE ANSWER IS NO. BUT YOU CAN HAVE THE
20 CREATING DOUBT LINE, IF YOU'D LIKE IT. YOU CAN HAVE THE WORD
21 UP THERE. I WAS THINKING -- AS I SAID, I THOUGHT NO. 30 WAS
22 NO. 172. SO IF YOU WANT THE WORD CREATING DOUBT OVER IT, YOU
23 COULD HAVE IT.

24
25 (REPORTER INTERRUPTION.)
26

27 THE COURT: I DON'T THINK HE SAID ANYTHING.
28 MR. PIUZE: LAWYER MUMBLE.

9687

1 MS. WILKINSON: YOU MEAN FOR ARGUMENT, HE CAN HAVE
2 IT?
3 THE COURT: HE CAN HAVE IT TO HIS HEART'S CONTENT TO
4 ARGUE. AND YOU CAN HAVE THE WORDS ON TOP CREATING DOUBT,
5 BECAUSE IT'S YOUR ARGUMENT CHART. BUT IT IS THAT. AND I
6 APOLOGIZE FOR CONFUSING YOU AND APPEARING TO WOBBLE, BUT I
7 THOUGHT THAT OTHER THING WAS, AS I SAID, 30.
8 MR. PIUZE: OKAY.
9 THE COURT: OKAY. ENJOY IT.
10 MR. PIUZE: I'M NOT THE JUDGE. I'M JUST A LAWYER.
11 THE COURT: THAT'S ALL I AM, TOO.
12 THE COURT: AND MR. PIUZE --

13
14 (SHORT PAUSE.)
15

16 THE COURT: OKAY. SO 172 IS NOT COMING IN EVIDENCE.
17 THE NEXT ONE UP THAT I HAVE IS 283, CTR MEMO
18 DATED SEPTEMBER 15TH THROUGH 17TH -- LOOKS LIKE '72, I WROTE,
19 MAYBE, AND I HAVE SOMETHING -- NO FOUNDATION WRITTEN ON THIS
20 THING, BUT THAT MAY HAVE BEEN FROM SOME TIME AGO.
21 HELP ME OUT, FOLKS. THAT MAY HAVE BEEN THE
22 DATE.

23 MR. PIUZE: WE NEED A MINUTE HERE, PLEASE.
24 THE COURT: NO PROBLEM.

25
26 (SHORT PAUSE.)
27

28 MR. PIUZE: THERE WAS NO FOUNDATION BEFORE, AND THE
9688
1 SAME FOUNDATION EXISTED, EXISTED BEFORE. SO IF THE COURT WAS
2 RIGHT IN DENYING IT BEFORE, THAT SHOULD STILL BE THE COURT'S
3 RULING.

4 THE COURT: THANK YOU.
5 OKAY. IN THAT CASE, 283 IS NOT COMING INTO
6 EVIDENCE.

7 MR. PIUZE: AT LEAST DR. DOMINO, AFTER ALL THESE
8 YEARS GOT TO KNOW WHICH ONE OF HIS BUDDIES TORPEDOED HIS
9 PROPOSAL.

10 THE COURT: OH, I REMEMBER. HE HADN'T SEEN IT
11 BEFORE. THAT'S THIS MEMO.

12 OKAY. OKAY. 329, POLL RESULTS. I HAVE IT AS
13 NEVER COME IN. I HAVE A LITTLE -- NEXT TO IT FOR MY NOTES,
14 IT SAID OKAY. BUT 329 --

15 MR. GARDNER: YOUR HONOR, I BELIEVE THAT WAS THE ONE
16 THAT HAD '77, '85 AND '90, AND THEN IT WAS GOING TO COME IN.
17 AND WE ALSO GAVE HIM '85 AND '90, COMPLETE POLLS, WHICH WAS
18 ANOTHER REQUIREMENT THE COURT HAD.

19 THE COURT: SO IT'S IN NOW.

20 MS. WILKINSON: THAT'S WHEN JAMIEL FIXED IT ON THE
21 COMPUTER.

22 THE COURT: OKAY. MR. PIUZE, YOU STILL HAVE IT.

23 MR. PIUZE: ALL OF THAT IS INACCURATE. I NEVER
24 WANTED IT. IT'S THEIR EXHIBIT.
25 THE COURT: ALL RIGHT.
26 YOU STILL WANT IT, MR. GARDNER?
27 MR. GARDNER: YES, YOUR HONOR.
28 THE COURT: 329, AS AMENDED, IS IN.
9689
1 (EVID. - 329)
2
3 THE COURT: I'VE STILL GOT 358 AND 359, "COMING OF
4 AGE" AND "PRESENT TENSE," IN THAT ORDER. YOU WERE GOING TO
5 LOOK AT IT, GIVE ME AN HONEST READ ON IT.
6 MR. PIUZE: AN HONEST READ?
7 THE COURT: A QUASI HONEST READ ANYWAY, HUH.
8 MR. PIUZE: OKAY. SO WHAT I DID WAS -- YOUR HONOR
9 HAD ORDERED US TO GET RID OF AND THEN WE WERE LEFT
10 WITH -- I TOOK CHAPTER 10, WHICH STARTS ON PAGE 353 UP TO
11 THROUGH CHAPTER 12, WHICH ENDS ON 465, AND I'VE PUT CLIPS ON
12 CERTAIN PAGES THAT I THINK ARE IMPORTANT, BUT I THINK THE
13 JURY SHOULD BE ALLOWED TO SEE THIS. AND IF THE COURT WANTS
14 TO CUT IT DOWN, I'LL JUST HAVE COPIES MADE, JUST OF THOSE
15 CHAPTERS, BUT THESE CHAPTERS WERE ON THE '60S.
16 THE COURT: WHICH I REMEMBER, AND IT WAS FOR THIS MAN
17 AND WHAT HE TESTIFIED TO COURT, FOR COURT, AND IT WAS MEANT
18 FOR IMPEACHMENT, RIGHT?
19 DO I HAVE THAT STRAIGHT, MORE OR LESS?
20 MR. PIUZE: YES.
21 THE COURT: I MEAN, WHAT WAS IMPORTANT BEFORE HE
22 TESTIFIED, AND THAT'S WHAT YOU FEEL IS IMPEACHMENT. I GOT
23 THAT. YES.
24 MR. PIUZE: THAT, PLUS, HE TESTIFIED THERE WAS
25 NO -- BASICALLY, THERE WASN'T ANY PARTICULAR DISTRUST OF
26 GOVERNMENT DURING THAT TIME WHEN MR. RELLER SAID HE
27 DISTRUSTED IT, AND, OF COURSE, THESE PAGES CONTAIN NUMEROUS
28 REFERENCES TO DISTRUST OF GOVERNMENT, DISTRUST OF GOVERNMENT.
9690
1 I MEAN, ON AND ON AND ON. WE LIVED THROUGH THE '60S. WE
2 KNOW. HE DID, TOO, SO DOES HE. SO --
3 MR. GARDNER: YOUR HONOR, JUST TO PUT -- AND I DON'T
4 MEAN TO INTERRUPT, BUT I'D LIKE TO SEE EXACTLY WHAT IT IS. I
5 DON'T KNOW EXACTLY WHAT IT IS THAT MR. PIUZE IS TRYING TO
6 INTRODUCE TO DETERMINE WHETHER IT IMPEACHES ANYTHING THAT
7 DR. SCHALLER SAID.
8 THE COURT: OKAY. WHY DON'T YOU LOOK AT IT. YOU
9 TAKE THE EVENING, YOU ENJOY IT. WE'LL GET BACK TO IT
10 TOMORROW. OKAY. YOU LOOK AT IT TOMORROW. WE'LL GET BACK TO
11 IT.
12 I THINK EVERYTHING ELSE, EXCEPT FOR THOSE TWO,
13 IS IN.
14 MR. SABALBURO, BOSS THAT YOU ARE, AM I RIGHT?
15 THE CLERK: I'M THE BOSS, YOUR HONOR.
16 THE COURT: YES. YOU'RE ALWAYS THE BOSS. I KNOW
17 THAT. YOU KNOW THAT.
18 HAVE WE MARKED EVERYTHING?
19 HAVE WE RULED ON EVERYTHING THAT'S BEEN MARKED
20 FOR IDENTIFICATION?
21 THE CLERK: YES.
22 THE COURT: HAVE I DONE THAT?
23 THE CLERK: YES, YOUR HONOR.
24 THE COURT: YOU WANT THIS?
25 OKAY. LET'S GO THROUGH THE JURY INSTRUCTIONS.
26 MS. WILKINSON, THANK YOU VERY MUCH FOR GIVING
27 ME A TABLE. DID YOU SHARE IT WITH MR. PIUZE?

28 MS. WILKINSON: I THINK WE HAVE A COPY FOR MR. PIUZE.

9691

1 THE COURT: THANK YOU VERY MUCH FOR THE
2 CROSS-REFERENCE BETWEEN THE JUDICIAL COUNCIL INSTRUCTION AND
3 THE BAJI INSTRUCTION.

4 THE OTHER THING THAT I AM SOMEWHAT CONCERNED
5 ABOUT, MS. WILKINSON AND MR. PIUZE, IS --

6 MS. WILKINSON: HOLD ON. I THINK MR. PIUZE IS
7 TALKING TO MR. -- THE JUDGE IS TALKING TO BOTH OF US.

8 THE COURT: THAT'S RIGHT. YOU GUYS CAN DO THAT.
9 JUST FIGURE IT OUT. OKAY.

10 MS. WILKINSON: WHY DON'T WE JUST GO AHEAD. YOU AND
11 I CAN DECIDE ON THE INSTRUCTIONS. THAT'S FINE WITH ME.
12 SINCE YOU PLAY DEVIL'S ADVOCATE, ALTHOUGH, I DON'T -- I DON'T
13 THINK IT REALLY HELPS ME NOT TO HAVE MR. PIUZE HERE.

14 YOUR HONOR, JUST TO MAKE THE RECORD CLEAR, I
15 HANDED UP TO YOUR HONOR AND TO MR. PIUZE ONE INSTRUCTION THAT
16 WE HAD FAILED TO TURN IN TO THE COURT. AND MR. PIUZE -- AND
17 IT'S NOW LABELED DEFENDANTS' PROPOSED INSTRUCTION NO. 17 ON
18 THE 1994 CONGRESSIONAL TESTIMONY. I KNOW YOU DON'T WANT TO
19 TALK ABOUT IT RIGHT NOW. I JUST WANT TO MAKE THE RECORD
20 COMPLETE.

21 THE COURT: OKAY. SO, MR. PIUZE, YOU NOW HAVE GOT
22 THE BYPLAY.

23 MS. WILKINSON AND MR. PIUZE, ONE OF THE PLAYS I
24 HAVE IS ABOUT THE ADDITIONAL COUNCIL INSTRUCTIONS. BECAUSE
25 I'VE NOW HAD A CHANCE TO GO THROUGH THEM, QUICKLY, ALBEIT,
26 BUT GO THROUGH THEM, IS I HAVE LESS OF AN ISSUE ABOUT THIS
27 FOR GENERAL INSTRUCTIONS.

28 I HAVE MORE OF A CONCERN ABOUT IT, ABOUT

9692

1 INSTRUCTIONS DEALING WITH SPECIFIC CAUSES OF ACTION, LIKE
2 NEGLIGENCE OR FRAUD, AND I AM CONCERNED ABOUT SETTING UP AN
3 ISSUE FOR EITHER ONE OF YOU ON APPEAL THAT DOESN'T NEED TO BE
4 DONE BECAUSE I DON'T WANT TO HEAR AN ARGUMENT LATER ON THAT,
5 GEE, WHIZ, YOU, YOUR HONOR, YOU GIVE A BAJI INSTRUCTION ON
6 X-SUBJECT, WHATEVER IT IS, AND THEN AT DEFENDANTS' REQUEST,
7 YOU'VE NOW GIVEN AN -- I CAN NEVER -- REMIND ME --

8 MS. WILKINSON: JUDICIAL COUNCIL.

9 THE COURT: JUDICIAL COUNCIL PROPOSED INSTRUCTION.

10 SO IF WE CAN GET PAST THAT HURDLE, AND AT THE
11 TIME, AS YOU KNOW, I DIDN'T HAVE ACCESS TO THE JUDICIAL
12 COUNCIL INSTRUCTION. IF IT WEREN'T FOR YOU, MS. WILKINSON, I
13 STILL WOULDN'T HAVE ACCESS TO THEM. THAT'S NUMBER ONE.

14 AND NUMBER TWO, THEY HADN'T BEEN APPROVED AT
15 THE TIME. IF THEY WERE APPROVED AT ALL, IT WAS YESTERDAY.

16 MS. WILKINSON: THEY WERE. WE FOUND OUT -- MR. VITAN
17 WENT ON LINE AND FOUND OUT THEY HAVE BEEN APPROVED.

18 TO ADDRESS YOUR FIRST CONCERN, YOUR HONOR, A
19 LOT OF THE JUDICIAL COUNCIL INSTRUCTIONS WE HAVE PROPOSED
20 REALLY ARE IMPROVEMENTS TOWARD PLAIN ENGLISH OR, AS
21 YOUR HONOR LIKES TO CALL IT, AMERICAN.

22 THE COURT: VERSUS THE ENGLISH VERSION.

23 MS. WILKINSON: IT'S IMPORTANT FOR US, BECAUSE YOU
24 HEARD THE JURORS THE OTHER DAY ASKING YOU VERY BASIC
25 QUESTIONS ABOUT THINGS THAT ALL OF US IN THIS COURTROOM
26 THOUGHT THEY KNEW, LIKE WHAT SUSTAIN AND OVERRULED MEANS.
27 AND I KNOW I'VE HAD EXPERIENCE IN MY CAREER WHERE WE THINK
28 THE INSTRUCTIONS ARE CLEAR TO US LAWYERS AND THE JUDGES AND

9693

1 IT'S VERY HARD FOR THE JURORS TO FOLLOW.

2 SO MY SUGGESTION, AS WE GO ALONG -- YOUR HONOR
3 HAS ALREADY SUGGESTED SOME OF THE GENERAL INSTRUCTIONS AREN'T

4 AS PROBLEMATIC -- IF WE CAN GO INSTRUCTION BY INSTRUCTION, WE
5 CAN LOOK AT THE DIFFERENCE, BECAUSE I THINK SOME OF
6 THEM -- FOR EXAMPLE, ON THE ACTUAL CLAIMS -- TRY TO MERGE
7 SOME OF THE INSTRUCTIONS AND JUST MAKE THE LANGUAGE CLEARER,
8 LIKE A SUBSTANTIAL FACTOR IS INTEGRATED INTO THE INSTRUCTION.

9 I DON'T THINK THEY ARE DRAMATICALLY DIFFERENT
10 ON THE LEGAL ISSUES WHERE YOUR HONOR MIGHT BE CONCERNED FOR
11 BOTH OF US --

12 THE COURT: THAT'S WHAT I WAS --

13 MS. WILKINSON: -- ON APPEAL, WHICH WE APPRECIATE.

14 THE COURT: THAT'S WHAT I WAS CONCERNED WITH.

15 MR. PIUZE, I KNOW YOU WERE TRYING TO BALANCE,
16 MULTI-TASK. I DON'T KNOW IF YOU GOT THE DRIFT OF WHAT I WAS
17 CONCERNED ABOUT.

18 MR. PIUZE: MY POSITION IS VERY SIMPLY STATED.

19 THE COURT: BAJI ONLY. THAT'S IT. NO WAY.

20 MR. PIUZE: YES. WE'VE GOT A LOT TO DO, AND IT'S
21 VERY NICE THAT WE'VE GOT A FULL EMPLOYMENT ACT HERE, AND 99
22 LAWYERS THAT RUN AROUND RECREATING THE WORLD, BUT THERE'S NO
23 REASON FOR IT.

24 I'VE MANAGED TO TRY ROUGHLY 150 CASES WITH
25 THESE BAJI INSTRUCTIONS, AND THE WORLD HASN'T GROUND TO AN
26 END. AND IT'S VERY NICE TO BE ABLE TO HAVE THE LUXURY OF
27 HAVING A LAWYER TO REWRITE EVERY OTHER INSTRUCTION AND ADD,
28 OH, YEAH, INCLUDING SOME OF THE BAJI'S MODIFIED BECAUSE THEY

9694

1 THINK THEIR GRAMMAR IS BETTER THAN THE BAJI COMMITTEE, WHICH,
2 UNDOUBTEDLY, IT IS, BUT SO WHAT?

3 IT'S JUST AN UNNECESSARY, UNDUE BURDEN FOR ME,
4 AND IT'S AN UNNECESSARY WASTE OF TIME.

5 SO IT SOUNDS LIKE 352. I'M 352-ING. I'M
6 ASKING FOR A 352 BOUNCE ON THIS JUDICIAL COUNCIL STUFF, AND
7 ALSO ON THEIR EDITING OF THE BAJI INSTRUCTIONS THAT THEY
8 REQUESTED. LET'S JUST USE THE INSTRUCTION AND GET DONE AND
9 GO ON WITH OTHER THINGS.

10 THE COURT: MR. PIUZE, I HAVE TRIED VERY HARD FOR
11 BOTH SIDES TO NOT THROW ANYTHING OUT OF HAND, WITHOUT AT
12 LEAST CONSIDERING THEM.

13 MY CONCERN, MR. PIUZE, HAD BEEN AN ISSUE,
14 ESPECIALLY WHEN IT COMES TO THE SUBSTANTIVE INSTRUCTIONS,
15 WHICH I HAD ALREADY GIVEN TO THE JURY AT THE BEGINNING OF THE
16 TRIAL AND USED THE BAJI INSTRUCTIONS, IN PART BECAUSE I
17 DIDN'T HAVE READY ACCESS TO THE OTHER INSTRUCTIONS, AND NOT
18 UNTIL TODAY, UNTIL DEFENDANTS GAVE IT TO ME, HAVE I EVER HAD
19 A CHANCE TO SEE A USE NOTE ON ANYTHING. AND WE WERE RUSHING
20 SO FAST BEFORE, AND I HAD A REASONABLE TRUST IN BAJI.

21 THAT DOES NOT MEAN THAT I DON'T HAVE A TRUST IN
22 THESE OTHER INSTRUCTIONS, BUT I WAS JUST TRYING TO MAKE SURE
23 THAT I WOULDN'T HAVE AN ISSUE FROM YOU PEOPLE THAT A BAJI
24 INSTRUCTION THAT WAS GIVEN THAT WAS ALMOST IDENTICAL TO A
25 JUDICIAL COUNCIL INSTRUCTION, THAT MAYBE THE WORD MEANING OF
26 THE SAME, BUT THE WORDS HAVE BEEN CHANGED SLIGHTLY. I DIDN'T
27 WANT THAT AS AN ISSUE ON APPEAL.

28 THAT'S WHAT I WAS TALKING ABOUT, MR. PIUZE.

9695

1 MR. PIUZE: OKAY. AND I UNDERSTAND THAT.

2 I'D ADD ONE MORE THING, TOO, WHICH IS THAT,
3 GIVEN THIS INCREDIBLE TRIAL TIME LINE THAT WAS REQUESTED, AND
4 THEN MEMORIALIZED BY PHILIP MORRIS AND THEN
5 BROWN & WILLIAMSON, ALL THE JURY INSTRUCTIONS WERE SUPPOSED
6 TO BE IN WHENEVER, AND THEY WERE.

7 AND NOW, AND INCLUDED -- I'M JUST JUMPING THE
8 GUN JUST A BIT HERE -- BUT INCLUDED IN THE JURY INSTRUCTIONS

9 THAT WERE TURNED IN AT THE BEGINNING OF TRIAL WERE A REQUEST
10 FOR SOME SPECIALS.

11 NOW, WAY AFTER THE STATUTORY TIME IN WHICH JURY
12 INSTRUCTIONS SHOULD BE IN, HERE COMES A PARADE OF NEW
13 INSTRUCTIONS, DIFFERENT INSTRUCTIONS, MORE SPECIAL
14 INSTRUCTIONS, AND SOME OF THEM CONTRADICT WHAT'S -- THIS
15 ISN'T JUST THE BAJI THING NOW. SOME OF THEM ALREADY
16 CONTRADICT WHAT'S ALREADY BEEN READ TO THE JURY.

17 I DON'T THINK THE DEFENSE HAS A RIGHT TO BE
18 BRINGING IN INSTRUCTIONS AT THIS LATE DATE. AND I THINK
19 THEY'RE UNTIMELY, AND I SHARE THE COURT'S CONCERNS.

20 MS. WILKINSON: YOUR HONOR, I'M NOT GOING TO RESPOND
21 BECAUSE I DON'T THINK THE COURT AGREES WITH THE UNTIMELINESS.
22 I JUST WANT TO MAKE SURE --

23 THE COURT: THAT'S FINE. I'LL GO THROUGH THEM.

24 ALL RIGHT. AS TO THE JCS INSTRUCTION NO. 1900,
25 MODIFIED.

26 I FOUND ON PAGE 6 OF DEFENDANTS' PROPOSED
27 INSTRUCTION INSIDE THEIR PACKET, THIS IS ALMOST IDENTICAL TO
28 1.00 OF BAJI AND 1.001 OF BAJI.

9696

1 I'M NOT COMFORTABLE WITH THE PHRASE THAT'S BEEN
2 ADDED (READING):

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THE COURT: YOU'RE GETTING THAT.

MS. WILKINSON: THANK YOU.

THE COURT: OKAY. I WANT TO COVER THE TOPICS. I
JUST NEED TO COVER THEM. I WAS NOT COMFORTABLE WITH, AS I
SAID BEFORE, THE LANGUAGE THAT YOU FOLKS WANTED TO ADD, THE
DEFENDANTS WANTED TO ADD.

MS. WILKINSON: YOUR HONOR, THE ONLY OTHER THING I'D
ADD IS WE CAN TAKE THAT OUT AND JUST READ THE INSTRUCTION
WITHOUT THAT ADDITION.

THE COURT: THANK YOU FOR OFFERING.

WE'RE USING BAJI 1.00 AND 1.00.1.

YOU FOLKS HAVE AGREED TO 1.00.5 IN BAJI, WHICH
IS YOU'RE FORBIDDEN TO MAKE ANY INDEPENDENT INVESTIGATION.

14 I DID NOTICE, MR. PIUZE, THAT THEY HAD MODIFIED
15 IT SOMEWHAT TO ADD THE WORDS, "INTERNET AND INTERVIEW OTHER
16 PERSONS," WHICH IS, IN ESSENCE, PARAPHRASING WHAT I HAD TOLD
17 THEM BEFORE. THOSE MODIFICATIONS WERE FINE WITH ME.

18 MR. PIUZE, DID YOU NOTICE THEM?

19 MR. PIUZE: I NOTICED THEM, AND I ACCEPT THEM.

20 THE COURT: OKAY. 1.02, STATEMENTS OF COUNSEL, YOU
21 FOLKS HAD AGREED ON THE DEFENDANTS' VERSION; IS THAT RIGHT,
22 MR. PIUZE?

23 MR. PIUZE: I HATE TO BE PICKY, BUT I AGREED ON 1.02,
24 WHICH IS WHAT THEY TURNED IN. THIS IS 1.02.

25 THE COURT: OKAY. 1.03, ENTITY NOT TO BE PREJUDICED
26 AS SUCH.

27 THAT'S OKAY WITH YOU AS TURNED IN?

28 MR. PIUZE: YES.

9698

1 THE COURT: NEXT ONE THEY HAVE UP IS ON THEIR PAGE
2 11, JCS INSTRUCTION 105. IT DEALS WITH WITNESSES.

3 THIS ONE IS BOTH SIMILAR AND MARKEDLY DIFFERENT
4 FROM -- I THINK IT'S OUR 2.20. IT SEEMS TO COMBINE 2.01,
5 2.20, 2.21 AND 2.22, BUT I SEE IT AS MAINLY AN ENCAPULIZATION
6 OR RECONSTITUTION, I GUESS, OF 2.20. IF THIS ONE IS USED --
7 AND I'M NOT SAYING ONE WAY OR THE OTHER IF IT WILL BE -- ON
8 PAGE 12, THERE IS A PHRASE DOWN HERE THAT SAYS, "OR INSERT
9 ANY OTHER IMPERMISSIBLE FORM OF BIAS."

10 I HAVE NO IDEA WHAT YOU HAVE IN MIND FOR THAT.

11 MS. WILKINSON: NOTHING, YOUR HONOR. IT WAS JUST
12 THERE IN CASE THERE IS SOMETHING. WE JUST WANTED YOU TO HAVE
13 THE COMPLETE INSTRUCTION AS DRAFTED.

14 THE COURT: MR. PIUZE, DO YOU HAVE ANY THOUGHTS ONE
15 WAY OR ANOTHER AS TO USING 105 VERSUS -- WHICH SEEMS TO
16 INCORPORATE 2.01, 2.20, 2.21, AND 2.22?

17 MR. PIUZE: YES. MY THOUGHTS ARE THAT WE SHOULD USE
18 BAJI. I'VE STATED MY REASONS.

19 AN ADDITIONAL REASON IS THE COURT'S COMMENT
20 THAT IT SEEMS TO INCORPORATE THESE OTHERS. MAYBE IT DOES,
21 MAYBE IT DOESN'T. DOES THAT MEAN WE GET RID OF THE OTHERS?

22 DOES THAT MEAN WE WANT TO TAKE THE TIME, MAKE
23 SURE ALL OF THE POINTS IN ALL OF THE OTHERS ARE COVERED
24 WITHIN HERE?

25 I DON'T.

26 MS. WILKINSON: YOUR HONOR, WE HAVE A COUPLE OF SETS
27 OF THE BAJI'S WE CAN GIVE TO YOU AND MR. PIUZE THAT ARE
28 REFERENCED IN THIS CHART, SO IT MAKES IT EASIER FOR EVERYONE

9699

1 TO LOOK AT THEM.

2 THE COURT: OKAY.

3 I PREFER 2.01 TO -- THIS IS BAJI 2.01 TO
4 JCS 105, BECAUSE IT ACTUALLY COVERS MORE THINGS. IT COVERS
5 THINGS LIKE, YOU CAN'T -- YOU WEREN'T -- IT SAYS (READING):

6
7 IT DOES NOT MEAN THAT YOU ARE
8 FREE TO DISREGARD THE TESTIMONY OF ANY
9 WITNESS MERELY FROM CAPRICE OR
10 PREJUDICE OR FROM A DESIRE TO FAVOR
11 EITHER SIDE. IT DOES MEAN THAT YOU
12 MUST NOT DECIDE ANYTHING BY SIMPLY
13 COUNTING THE NUMBER OF WITNESSES WHO
14 HAVE TESTIFIED ON OPPOSING SIDES.

15
16 IT DOESN'T -- ONE, 105 DOESN'T COVER THOSE
17 CONCEPTS, AND I THINK THEY'RE IMPORTANT. IF IT DOES, I
18 DIDN'T SEE IT.

19 I'M DOING THIS FAST, MS. WILKINSON. I HAVEN'T
20 HAD SEVERAL DAYS TO COMPARE THEM.
21 MS. WILKINSON: WHICH PORTION, YOUR HONOR?
22 I'M SORRY. YOU SAY --
23 THE COURT: LOOK AT 2.02 IN BAJI.
24 MS. WILKINSON: 2.02 OR 2.21.
25 THE COURT: 2.02 IN BAJI.
26 I'M SORRY. YOU HAVEN'T ASKED FOR IT DOWN HERE.
27 2.01. I MISSPOKE. 2.01. I LOOKED AT THE
28 WRONG PART OF THE PAGE. 2.01.

9700

1 MS. WILKINSON: YOUR HONOR, IS IT 2.01, YOU'RE
2 SAYING, 2.01 -- PARDON ME -- THAT'S NOT COVERED IN JCS 105?
3 THE COURT: IF IT'S THERE, I DON'T SEE IT.
4 MS. WILKINSON: I THINK ON PAGE 12, THAT'S PART OF
5 IT.
6 THE COURT: PART OF IT IS THERE. IS THE PART ABOUT,
7 YOU CAN'T DISREGARD THE TESTIMONY OF A WITNESS FROM CAPRICE
8 OR PREJUDICE IN THERE?
9 MS. WILKINSON: I THINK THEY COVERED -- COVER IT TWO
10 DIFFERENT WAYS, YOUR HONOR.
11 THE COURT: I'M SORRY. I CAN'T HEAR YOU. I'M SORRY.
12 I THINK THEY COVER IT TWO DIFFERENT WAYS BY USING DIFFERENT
13 LANGUAGE. BECAUSE I THINK IT'S HARD FOR PEOPLE -- PEOPLE TO
14 UNDERSTAND WHAT "CAPRICE" AND "PREJUDICE" MEANS.
15 BUT ON PAGE 11, DOWN AT THE BOTTOM, PARAGRAPH
16 BEFORE THE VERY BOTTOM (READING):

17
18 YOU MAY CONSIDER THESE
19 DIFFERENCES, BUT DO NOT DECIDE THAT
20 TESTIMONY IS UNTRUE JUST BECAUSE IT
21 DIFFERS FROM OTHER TESTIMONY.
22
23 AND THEN IF YOU GO TO PAGE 12 (READING):

24
25 DO NOT MAKE ANY DECISIONS
26 SIMPLY BECAUSE THERE WAS MORE
27 WITNESSES ON ONE SIDE THAN ON THE
28 OTHER, IF YOU BELIEVE IT IS TRUE THAT

9701

1 TESTIMONY OF A SINGLE WITNESS IS
2 ENOUGH TO PROVE A FACT.
3
4 AND I THINK THAT ENCOMPASSES THE IDEA OF
5 CAPRICE OR PREJUDICE.
6 ALL RIGHT. I'M NOT COMFORTABLE WITH 105. I
7 GAVE YOU ONE EXAMPLE. THEREFORE, JCS INSTRUCTION 105 WILL
8 NOT BE USED, AND THE COMPANION ONES IN BAJI, 2.01, 2.20, 2.21
9 AND 2.22 WILL BE USED, WITH ONE EXCEPTION.

10 MS. WILKINSON, I LIKE THE LANGUAGE AT THE
11 BOTTOM OF THE LAST PARAGRAPH IN JSC NO. 105 (READING):

12
13 YOU MUST NOT BE BIASED AGAINST
14 ANY WITNESS BECAUSE OF HIS OR HER
15 RACE, SEX, RELIGION, OCCUPATION,
16 SEXUAL ORIENTATION OR NATIONAL ORIGIN.

17
18 SO I WOULD LIKE IT, MS. WILKINSON, AS A FAVOR
19 TO ME, IF YOU CAN JUST TAKE THAT OUT OR --

20 MS. WILKINSON: ADD IT ONTO THE BAJI?
21 THE COURT: I DON'T CARE WHERE IT GOES.
22 MS. WILKINSON: SURE.
23 THE COURT: BUT I THINK IT'S AN IMPORTANT CONCEPT.

24 MR. PIUZE, ARE YOU GOING TO OBJECT TO THAT?
25 MR. PIUZE: NO.
26 THE COURT: THANK YOU.
27 MS. WILKINSON: WE CAN PUT IT RIGHT AT THE END OF
28 2.20, BELIEVABILITY OF WITNESSES, YOUR HONOR.
9702
1 THE COURT: THAT'S FINE. THANK YOU.
2 THAT WILL WORK JUST FINE.
3 MS. WILKINSON: SO YOU'RE GOING TO READ 2.21 AND 2.22
4 TO COVER ALL OF THOSE ISSUES WE JUST DISCUSSED, AND 2.01?
5 THE COURT: TRUE. CORRECT.
6 MS. WILKINSON: OKAY. 2.01, 2.20, 2.21, AND 2.22?
7 THE COURT: YES.
8 MS. WILKINSON: OKAY.
9 MR. PIUZE: WHAT HAPPENED TO 2.20?
10 DID YOU SAY THAT?
11 MS. WILKINSON: SHE DID.
12 THE COURT: I THINK SHE DID. I DID.
13 MR. PIUZE: CAN WE STOP AT 2.20 FOR A SECOND, PLEASE?
14 THE COURT: OF COURSE. JUST A MINUTE.
15 MR. PIUZE: UNDER THE STATE OF THE EVIDENCE IN THE
16 CASE WHERE THE EVIDENCE IS NOW CLOSED, THE LAST -- ALL THREE
17 BRACKETED PARAGRAPHS AT THE END --
18 THE COURT: I'VE TAKEN THEM OUT.
19 MR. PIUZE: ALL THREE?
20 THE COURT: ALL THREE.
21 MR. PIUZE: YES. THANK YOU.
22 THE COURT: THAT DEALS WITH AN ADMISSION OF AN
23 UNTRUTHFULNESS, FELONY -- I DON'T REMEMBER -- CHARACTER FOR
24 HONESTY AND VERACITY. THOSE ARE GONE.
25 ALL RIGHT. AND 2.22, WILLFULLY FALSE, IS IN AT
26 THE REQUEST OF SOMEBODY HERE.
27 NEXT ONE THAT I HAVE UP THAT'S IN
28 DISPUTE -- WELL, NOT IN DISPUTE. YOU FOLKS HAVE AGREED UPON
9703
1 1.10?
2 MS. WILKINSON: THAT'S RIGHT, YOUR HONOR.
3 THE COURT: THAT'S BAJI, SO THAT ONE WILL BE IN.
4 I HOPE YOU'RE KEEPING TRACK OF THIS,
5 MS. WILKINSON, BECAUSE I'M TRYING TO WORK OFF SEVERAL SETS OF
6 INSTRUCTIONS RIGHT NOW.
7 MS. WILKINSON: I AM. AND MR. VITAN IS ALSO KEEPING
8 TRACK. I'M SURE MR. PIUZE IS.
9 THE COURT: I'M SURE HE IS, TOO, BECAUSE I'M GOING TO
10 NEED -- BECAUSE I'M GOING TO ASK FOR A SET THAT'S DONE IN
11 BOOKLET FORM THAT IS CONTINUOUS READING. AND THEN I WOULD
12 LIKE THOSE, IF POSSIBLE, PHOTOCOPIED FOR THE JURY AS WELL.
13 SO IT'S ONE SET. WE DON'T HAVE 100 PAGES HERE.
14 MS. WILKINSON: WE'LL DO THAT, YOUR HONOR, WHEN
15 YOU'RE DONE MAKING YOUR RULINGS. WE'LL PUT IT IN BOOK FORM
16 IN DRAFT AND I WILL GIVE IT TO MR. PIUZE TO MAKE SURE HE
17 AGREES AND THEN SUBMIT IT TO THE COURT AND HAVE COPIES FOR
18 THE JURORS.
19 THE COURT: OKAY. I UNDERSTAND 1.23 OF BAJI,
20 IDENTIFICATION OF PARTIES, HAS BEEN WITHDRAWN.
21 THE NEXT ONE I HAVE IS DEFENDANTS' PROPOSED
22 INSTRUCTION NO. 1, WHICH WAS INFERENCES REGARDING LIABILITY.
23 AND I REMEMBER THIS INSTRUCTION, AND I DIDN'T LIKE IT AT ALL.
24 THE PROBLEM I HAVE WITH IT, MS. WILKINSON, IS
25 THAT IT'S VERY UNBALANCED. IT IS, IN ESSENCE, FOR ME,
26 ARGUMENT. I DON'T HAVE ANYTHING AGAINST YOU SAYING THESE
27 TYPES OF THINGS TO THE JURY, BUT FROM RIGHT NOW, FROM MY
28 STANDPOINT, MY CONCERN IS THAT IF I READ THIS INSTRUCTION AS

9704

1 IT'S CURRENTLY WORDED TO THE JURY, IT WOULD MAKE IT SOUND AS
2 THOUGH I'M SENDING A MESSAGE TO THE JURY TO VOTE FOR
3 PHILIP MORRIS AND AGAINST THE PLAINTIFF, AND I REALLY DON'T
4 WANT TO DO THAT.

5 I GUESS THERE POTENTIALLY COULD BE WAYS TO
6 REDRAFT THIS TO BE MORE BALANCED, BUT I'M NOT GOING TO DO IT.

7 SO RIGHT NOW, AS IT'S CURRENTLY WORDED, I THINK
8 IT'S MORE ARGUMENTATIVE, AND IT'S DENIED. THAT'S DEFENDANTS'
9 PROPOSED JURY INSTRUCTION NO. 1.

10 NEXT ONE I HAVE IS 2.60. THIS IS BAJI. I
11 THINK I HAVE TWO VERSIONS OF THIS. I'M NOT ENTIRELY SURE.

12 I DO. ONE OF THE PROBLEMS, I THINK, IS ONE OF
13 THE ONES WHERE THERE WAS SOME POTENTIAL REWORDING UNDER 2.60.
14 I PREFER THE --

15 WHY DON'T I TAKE THE CONFERENCE CALL.

16
17 (SHORT PAUSE.)
18

19 THE COURT: IT LOOKS LIKE YOU HAVE ADDED OR
20 SUBTRACTED SOME THINGS, AND THAT IS, YOU'VE ADDED DAMAGES FOR
21 PERSONAL INJURIES AT THE TOP OF 2.60 VERSUS JUST PLAINTIFF IS
22 SEEKING DAMAGES.

23 ACTUALLY, THEY'RE ASKING FOR THINGS OTHER THAN
24 PERSONAL INJURIES, BUT, AREN'T THEY -- YOU'RE ASKING FOR
25 PUNITIVE DAMAGES, TOO, ALTHOUGH THAT ISN'T AT THIS POINT,
26 BUT --

27 MR. PIUZE: NO. SURE, IT IS. BECAUSE THIS JURY'S
28 GOING TO HAVE TO MAKE A DETERMINATION AS TO SUPPRESSION AND

9705

1 FRAUD, BUT THAT COMES UNDER 2.62, ANYWAY. THERE'S A MUCH
2 BIGGER PROBLEM WITH THIS PARTICULAR INSTRUCTION.

3 THE COURT: IT TAKES THE WORD "PERPETRATES" OUT AND
4 USES A WORD THAT IS STRONGER. IT TAKES OUT THE WORD
5 DEFENDANT'S BURDEN OF PROOF, DESCRIBING THINGS LATER, BECAUSE
6 IF YOU FOLKS ARE RAISING AFFIRMATIVE DEFENSES, YOU HAVE A
7 BURDEN OF PROOF.

8 AND THERE'S AN ISSUE, ALSO, WITH THE BURDEN
9 SHIFTING IN ONE OF THOSE, THE ONE OF THE PRODUCT LIABILITY
10 THINGS.

11 MR. PIUZE: I THINK TO STREAMLINE, THIS IS --

12 THE COURT: HELP ME, WHAT'S YOUR OBJECTION?

13 MR. PIUZE: ULTIMATELY, THERE'S NOT GOING TO BE ANY
14 AFFIRMATIVE DEFENSE. THEIR ONLY AFFIRMATIVE DEFENSE IS
15 STATUTE OF LIMITATIONS, AND I BELIEVE THAT'S BEEN DENIED AS
16 MATTER OF LAW.

17 HOWEVER, ON STRICT PRODUCT LIABILITY, UNDER OUR
18 LAW, 9.00.5, THERE IS A BURDEN SHIFTING.

19 THE COURT: I THINK THAT'S WHAT I JUST SAID.

20 MR. PIUZE: ABSOLUTELY, UNEQUIVOCALLY. I MEAN,
21 THAT'S, BOOM. CAN'T GET AWAY FROM IT. THEY HAVE A BURDEN OF
22 PROOF.

23 AND THE BURDEN OF PROOF THAT I HAVE PENCILED
24 IN, IN THE VERSION I GAVE THE COURT -- ALTHOUGH I HAVE NO
25 EXACT PRIDE OF AUTHORSHIP, IT JUST HAPPENS TO BE SOMETHING
26 THAT WAS USED IN MY TWO PRIOR TOBACCO TRIALS AGAINST
27 PHILIP MORRIS AND WAS NOT RAISED AS ANY KIND OF AN APPELLATE
28 ISSUE ON THE ONE CASE THAT'S GONE TO APPEAL -- IT WAS

9706

1 AGREED-UPON LANGUAGE.

2 AS I SAY, I'VE GOT NO PRIDE OF AUTHORSHIP, AND
3 THAT LANGUAGE CAN BE CHANGED, BUT THERE --

4 THE COURT: NO. THANK YOU.

5 MR. PIUZE: OKAY.
6 THE COURT: I'M DENYING DEFENDANTS' VERSION OF 2.60
7 AND ACCEPTING PLAINTIFF'S VERSION OF 2.60.
8 NEXT UP IS JCS INSTRUCTION 201, MORE LIKELY
9 TRUE, CLEAR AND CONVINCING. IT'S NO. 18.
10 YOU KNOW, MS. WILKINSON, I SEE YOU HAVE JCS
11 INSTRUCTION 201 FOR CLEAR AND CONVINCING PROOF. I'VE
12 COMPARED IT TO 2.62 IN BAJI.
13 I PREFER THE BAJI INSTRUCTION, BECAUSE IT HAS
14 SUCH THINGS IN IT, SUCH EVIDENCE REQUIRES A HIGHER STANDARD
15 OF PROOF THAN PROOF BY A PREPONDERANCE OF THE EVIDENCE. AND
16 BECAUSE I KNOW THE WORD CLEAR AND CONVINCING EVIDENCE
17 DEFINITION IN BAJI HAS BEEN APPROVED BY APPELLATE TESTING.
18 201 HAS NOT BEEN. SO I'M GOING TO DENY 201 AND ACCEPT
19 PLAINTIFF'S BAJI 2.62.
20 MS. WILKINSON: THE PLAINTIFF NEVER GAVE US COPIES OF
21 ANY INSTRUCTIONS, OTHER THAN THE NUMBER. SO WHEN YOU SAY THE
22 PLAINTIFF'S 2.62, YOU MEAN THE MOST RECENT VERSION OF BAJI
23 LABELED 2.62, CORRECT?
24 BECAUSE WHEN YOU PRINTED IT OUT OF THE
25 COMPUTER, IT WASN'T ALL THE MOST UP TO DATE.
26 THE COURT: HE CORRECTED THEM. HE CORRECTED WHATEVER
27 I HAVE. I DON'T THINK THIS ONE HAS CHANGED FOR A VERY LONG
28 TIME. AND I GAVE YOU AND I'VE PHOTOCOPIED FOR YOU HIS
9707
1 EDITING.
2 MS. WILKINSON: THE PROBLEM IS, YOUR HONOR, HIS
3 EDITING I UNDERSTAND, BUT SOME OF THESE ARE NOT THE MOST
4 RECENT VERSION. HE DIDN'T UPDATE THEM.
5 THE COURT: 2.62 HAS NOT BEEN CHANGED FOR A VERY LONG
6 TIME. I HAVE BEEN READING THIS INSTRUCTION.
7 MR. PIUZE: IT'S NEVER BEEN CHANGED.
8 MS. WILKINSON: ALL I'M ASKING, JUDGE, SO WE CAN
9 FOLLOW YOUR INSTRUCTION, IS THAT WHEN YOU MEAN THE NUMBERS,
10 YOU MEAN THE MOST RECENT VERSION. BECAUSE WE'RE GOING TO
11 PRINT IT UP FOR MR. PIUZE, AND HE CAN REVIEW IT. THAT'S ALL
12 WE'RE TRYING TO CLARIFY.
13
14 (AN UNRELATED MATTER WAS HEARD
15 BY THE COURT.)
16
17 THE COURT: OKAY.
18 OKAY. THE NEXT ONE UP IS JCS INSTRUCTION
19 NO. 202, WHICH I HAVE DOWN AS PAGE 19 ON DEFENDANTS'
20 SUBMISSION. AND ITS COMPANION IS?
21 MS. WILKINSON: BAJI 2.00, YOUR HONOR.
22 THE COURT: 2.00?
23 MS. WILKINSON: YES.
24 THE COURT: THANKS.
25 ALL RIGHT. I SEE WE'RE TALKING ABOUT JET
26 PLANES HERE.
27 MS. WILKINSON: YOUR HONOR, WOULD THE COURT HEAR
28 ARGUMENT ABOUT WHY WE WOULD LIKE THIS INSTRUCTION?
9708
1 THE COURT: LET ME JUST FINISH LOOKING AT IT.
2 SURE. TELL ME.
3 MS. WILKINSON: IT'S OFTEN HEARD FROM JURORS THAT
4 THEY COMPLAIN THEY DON'T UNDERSTAND THE INSTRUCTIONS, EVEN
5 WHEN THEY READ THEM, AND ONE OF THESE IS DIRECT AND INDIRECT
6 EVIDENCE.
7 THIS GIVES AN EXAMPLE ABOUT THE JET PLANE, AND
8 WHAT IT MEANS TO TALK ABOUT IT WITH DIRECT EVIDENCE AND
9 INDIRECT OR CIRCUMSTANTIAL EVIDENCE.

10 IT IS NOT AN ISSUE IN OUR CASE; OBVIOUSLY, IT
11 HAS NO RELEVANCE. SO IT'S PLAUSIBLE, BUT I THINK IT'S JUST
12 HELPFUL FOR THE JURY TO GET AN EXAMPLE, INSTEAD OF THE KIND
13 OF BLAND BAJI INSTRUCTION THAT REALLY DOESN'T TELL THEM MUCH
14 MORE ABOUT WHAT THE DIFFERENCE IS BETWEEN THOSE TWO TYPES OF
15 EVIDENCE.

16 THE COURT: MR. PIUZE, DO YOU REALLY CARE ABOUT THIS
17 ONE?

18 DO YOU WANT TO BE HEARD ON THIS ONE?

19 MR. PIUZE: NO. I'VE STATED -- I'VE STATED MY
20 POSITION.

21 THE COURT: OKAY.

22 MR. PIUZE: IT REMAINS THE SAME.

23 YOU KNOW WHAT THIS REMINDS ME OF?

24 THE COURT: NO.

25 MR. PIUZE: DO YOU WANT TO KNOW?

26 THE COURT: NOT REALLY.

27 MR. PIUZE: CAN I TELL YOU ANYWAY?

28 THE COURT: SURE.

9709

1 MR. PIUZE: IT REMINDS ME OF ALL OF THE MONEY THAT
2 WENT TO RESEARCH FOR THE CTR SO THAT THEY COULD GO OUT AND
3 INVESTIGATE THINGS THAT HAD NOTHING TO DO WITH ANYTHING.

4 THE COURT: OKAY.

5 MS. WILKINSON, I LIKE THE 2.02 --

6 MS. WILKINSON: 202, YOU MEAN, YOUR HONOR?

7 THE COURT: YES. 202 OF JCS, OF THE EXAMPLE.

8 WHAT I'M GOING TO DO IS INCORPORATE A DRAFT OF
9 THE TWO INTO -- MERGE PARTS OF 202 OF JCS INTO 2.00.

10 SO WHAT I WOULD LIKE TO DO IS TAKE BAJI 2.00
11 AS-IS, THE ENTIRE FIRST PARAGRAPH, THE ENTIRE SECOND
12 PARAGRAPH AND THE ENTIRE THIRD PARAGRAPH.

13 THEN, I'D LIKE TO MERGE PART OF 2.02 AND DELETE
14 THE FIRST SENTENCE, "EVIDENCE CAN COME IN MANY FORMS," AND
15 THEN SAY, AS PARAGRAPH 4 ON 2.00, "PUT ANOTHER WAY," COMMA,
16 AND THEN PICK UP, "IT CAN BE TESTIMONY ABOUT WHAT SOMEONE SAW
17 OR HEARD OR SMELLED," THE REST OF PARAGRAPH 1 ON 202 AND ALL
18 OF PARAGRAPH 2 ON PAGE 202.

19 AND I UNDERSTAND, MR. PIUZE, THAT IS OVER YOUR
20 OBJECTION.

21 MS. WILKINSON: AND THEN NOT INCLUDE PARAGRAPH 3?

22 THE COURT: NOT INCLUDE PARAGRAPH 3 ON 202, BUT
23 INCLUDE 4 ON THE ORIGINAL BAJI 2.00.

24 MS. WILKINSON: UNDERSTOOD, YOUR HONOR.

25 THE COURT: BECAUSE YOU'RE RIGHT, I DO OFTEN GET
26 QUESTIONS ABOUT THAT.

27 MS. WILKINSON: SO, YOUR HONOR, WE'RE JUST -- I THINK
28 I UNDERSTAND, BUT I'M JUST CONSULTING WITH MR. VITAN. ALL OF

9710

1 BAJI 2.00 COMES IN, WE START THE NEXT PARAGRAPH, "PUT IT
2 ANOTHER WAY," AND PUT THOSE FIRST TWO PARAGRAPHS IN FROM
3 JCS 202.

4 THE COURT: YES.

5 MS. WILKINSON: THANK YOU.

6 THE COURT: AND THAT'S FOLLOWING THE PARAGRAPH THAT
7 BEGINS IN BAJI, "AN INFERENCE," AND PRECEDES THE PARAGRAPH IN
8 BAJI WHICH IS, "THE LAW MAKES NO DISTINCTION." OKAY.

9 CAN THAT BE DONE?

10 MS. WILKINSON: NO, YOUR HONOR.

11 THE COURT: IT CAN'T -- CAN'T BE DONE?

12 MS. WILKINSON: IT CAN BE DONE, BUT WE DON'T KNOW
13 WHERE YOU'RE READING FROM ON 2.00.

14 THE COURT: IF YOU -- IF YOU WANT TO WALK OVER HERE,

15 I CAN SHOW YOU.
16 MS. WILKINSON: SURE.
17 THE COURT: PARDON THE MESS.
18 MS. WILKINSON: I'M CONFUSED. I APOLOGIZE.
19
20 (DISCUSSION HELD OFF THE RECORD)
21
22 THE COURT: ALL RIGHT. SO FOR THE RECORD, THEN,
23 WE'RE GOING TO USE THE LATEST VERSION OF BAJI 2.00, BUT SINCE
24 THE BAJI 2.00 THAT I HAVE ON MY COMPUTER THAT WAS JUST
25 UPDATED THIS MORNING IS MARKEDLY DIFFERENT THAN THE BAJI IN
26 THE BOOK AND, APPARENTLY, THE LATEST INSTRUCTION ON IT, WE'RE
27 GOING TO USE.
28 MR. PIUZE: YOUR HONOR, WHAT DOES YOUR POCKET PART
9711
1 SAY IN THAT BAJI, THAT BOOK YOU'VE GOT THERE?
2 THE COURT: IT'S A BRAND-NEW BOOK. THE THING IS THAT
3 THE OTHER VERSION IS -- I KNOW IN MY MEMORY, IT'S VERY OLD.
4 JANUARY 2003. IT'S JUST NOT WHAT THEY GAVE ME HERE.
5 THE COURT: ALL RIGHT. MR. PIUZE, THE ONLY THING I'M
6 DOING IS STILL SIMILAR TO WHAT I WAS DOING BEFORE, IS TAKING
7 THE EXAMPLE OUT OF JCS 202.
8 MR. PIUZE: DO YOU KNOW THAT --
9 THE COURT: I KNOW THAT MAN.
10 MR. PIUZE: WE JUST HAD SOME POWER IN THE COURTROOM
11 MOMENTARILY. I WAS GOING TO USE HIS KNOWHOW TO DO SOMETHING,
12 BUT IT'S TOO LATE.
13 THE COURT: DO SOMETHING WITH MY COMPUTER PROGRAM OR
14 WITH ME?
15 MR. PIUZE: NO, NOT WITH YOU.
16 THE COURT: HE BEATS ON ME, TOO, MR. PIUZE.
17 MS. WILKINSON: COULD HE DO THAT?
18 SO IS THAT ALL YOU NEED FROM US TODAY,
19 YOUR HONOR?
20 YOU WANT TO SEE US BACK AT 8:30?
21 THE COURT: I'LL SEE YOU AT 8:30 TOMORROW MORNING.
22
23 (AT 3:45 P.M., AN ADJOURNMENT WAS TAKEN
24 UNTIL FRIDAY, JULY 18, 2003 AT 8:30 A.M.)
25
26
27
28